

Business Insurance

Reporting Weekly on Corporate Risk, Employee Benefit and Managed Health Care News / \$4

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GOP lawmakers crafting new health care legislation

WASHINGTON—As Rep. Charlie Norwood, R-Ga., makes a last-ditch effort to salvage his beleaguered Patient Access to Responsible Care Act, congressional Republicans are trying to assemble a health care quality bill.

Rep. Norwood last week unveiled the third version of his PARCA bill, which once again modifies the measure's most controversial provision: allowing employees injured or improperly denied coverage for services to sue health plans and employers under state law

See Updates on next page

Sweeping pension bill introduced

By JERRY GEISEL

WASHINGTON—Sensing a new legislative climate, employer groups are launching a new drive to pass sweeping pension reform legislation.

The legislation, introduced last week by Reps. Ben Cardin, D-Md., and Rob Portman, R-Ohio, and immediately embraced by a broad array of benefit groups, would go far beyond the modest reform efforts that Congress passed in 1997 and 1996 that began to peel away the complex pension rules that have accumulated over the years.

The new bill, H.R. 3788, would take a far grander approach than the earlier reform measures. Among other provisions, it would significantly increase the maximum benefits that can be provided through 401(k) and other pension plans. That change would significantly increase retirement benefits for higher-paid employees but would also cost the U.S. Treasury billions of dollars in lost tax revenue.

The measure, whose official title is the Retirement Security for the 21st Century Act, also would soften the rigid pension non-discrimination rules in favor of looser "facts and circumstances" tests, a fundamental change in direction from the past decade and a half of tougher and more complex non-discrimination tests.

"This bill marks a philosophical and policy reversal of fairly significant proportions," said Henry Saveth, an attorney with William M. Mercer Inc. in Washington.

Only a few years ago, the possibility that Congress would even consider a pension bill that would lose rather than reap revenue was virtually zero. Indeed, federal legislators often saw benefit plans as a tempting pie to dig into when new revenues were needed. The result was passage of a slew of tax bills and other measures in the 1980s and early 1990s that drastically cut back the maximum benefits that could be offered through qualified plans.

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How the Retirement Security Act would liberalize pension law

Provision	Current law	Retirement Security Act
Maximum 401(k) salary deferral	\$10,000	\$15,000
415 limits for defined contribution plans	\$30,000	\$45,000
415 limits for defined benefit plans	\$130,000	\$140,000
Employee compensation used to determine pension benefits	\$160,000	\$235,000
Special "catch up" savings plan contributions for older employees	Not allowed	\$5,000 ¹
Non-discrimination rules	Rigid	Flexible
401(k)-403(b) plan transfers	Not allowed	Permitted
Retirement plan cash-out amount	\$5,000	\$5,000 ²

¹ Per year
² But amount indexed to inflation

Lloyd's clouds its results

Lower profits seen in future

By SARAH GODDARD

LONDON—Lloyd's of London can't seem to avoid rain on its parade.

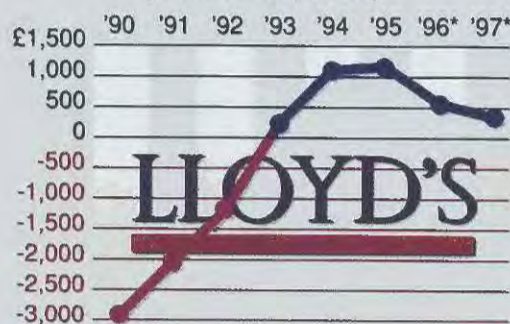
Even as the market announced a record profit of £1.15 billion (\$1.93 billion) last week for the 1995 year of account, senior executives were making gloomy forecasts about profitability decreases for 1996 and beyond, and a group of names was threatening to oust Chief Executive Ron Sandler from his post.

On a more positive note, rating agency A.M. Best Europe Ltd. confirmed its A (excellent) rating of the insurance market, commending Lloyd's on its turnaround and current focus on streamlining its infrastructure and reducing costs.

See Lloyd's on page 63

Profits may wane

(in millions of pounds)



* Lloyd's of London estimate
Source: Lloyd's of London

GRAPHIC BY JOHN HALL

The cost of recovery

Transit, reinsurers trade bad faith allegations

By DOUGLAS McLEOD

JEFFERSON CITY, Mo.—Insurers' executive compensation plans don't normally figure in their disputes with reinsurers, but such plans are now being cited in a bitter fight between the Transit Casualty Co. receivership and Lloyd's of London underwriters.

Transit, which collapsed in 1985, has filed breach of contract and bad faith suits against Lloyd's underwriters for refusing to cover \$3.3 million in paid claims allowed by the estate. The 15 Lloyd's syndicates are also liable for \$23.3 million in Transit case reserves, and may ultimately owe the estate a total of \$40 million, Cole County Circuit Court filings say.

Lloyd's underwriters, however, have leveled bad faith charges of their own, with one syndicate alleg-

ing that Transit has made a practice of improperly allowing claims from large corporate policyholders like W.R. Grace & Co., National Gypsum Co., GAF Corp. and others.

Transit's motive for allowing the claims, Lloyd's underwriters charge, is to boost the estate's reinsurance recoveries and pad incentive bonuses paid to Transit managers under the receivership's deferred compensation plans.

As reported last week in *Business Insurance*, those plans pay Transit officials a percentage of their salaries based on the estate's reinsurance recoveries. The plans have cost Transit \$21 million to date, including several million dollars payable to Special Deputy Receiver J. Burleigh Arnold and his two top

See Transit on page 60

Court revises guaranty rule

California ruling lets counties collect from guaranty fund

By JUDY GREENWALD

SANTA ANA, Calif.—An appellate court's finding that California county governments can collect from the state guaranty association could have a significant financial impact on the fund as well as on the insurers that fund it, says an insurer attorney.

The April 20 ruling by California's fourth appellate district court in Santa Ana in *County of Orange vs. FST Sand & Gravel Inc.* was the first by a state appellate court to conclude a local gov-

ernment entity can obtain money from the California Insurance Guarantee Assn., according to attorneys involved in the case. The attorneys said the decision may be applicable to state government agencies as well.

The decision hinged on whether legislatively approved language in the California Insurance Code was intended to exclude only the state government itself from collecting from CIGA or whether the exclusion extended to other governmental entities.

According to the decision, the

County of Orange sued the Serrano Irrigation District and a sand and gravel company, Corona, Calif.-based Frank Smith Trucking, for removing sand and gravel from county land. The company was insured by San Jose, Calif.-based Citation General Insurance Co., which was put into liquidation in 1995 (*BI*, Sept. 18, 1995).

CIGA took over the defense and filed a summary judgment motion against the county, asserting that the association was not statutorily required to pay any obligation

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Updates

GOP working on health bill

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for malpractice. Such suits now are pre-empted by the Employee Retirement Income Security Act.

Under the new Norwood measure, employees could not sue under state law if denial of care resulted in only financial loss rather than physical injury.

But Washington observers say the Norwood bill is all but dead and that action now will be focused on a House Republican task force putting together a health care quality bill. That measure is likely to emerge by the end of the month.

Aside from including provisions to increase the likelihood that patients receive better care from health plans, the Republican bill also may include highly controversial provisions to cap medical malpractice awards and make it easier for small employers to band together—without having to meet state licensing requirements—to form health insurance purchasing pools.

Ruling favors Kemper Re

LONDON—The U.K. Privy Council has ruled that Kemper Reinsurance Co. may appeal a Bermuda court order that barred the reinsurer from seeking judicial review of decisions concerning Electric Mutual Liability Insurance Co.'s 1995 redomestication.

A Bermuda judge in 1996 denied Kemper Re permission to seek judicial review of Bermuda government orders allowing EMLICO into the country, and the Bermuda Court of Appeal later declined to hear Kemper Re's appeal on jurisdictional grounds. The Privy Council ruled last week that the Court of Appeal has jurisdiction to hear the case, and Kemper Re said it would proceed with the appeal later this year.

Kemper Re, an EMLICO reinsurer, is seeking to quash the Bermuda government orders allowing the redomestication on the grounds that the now-insolvent EMLICO—a longtime General Electric Co. liability insurer—fraudulently misrepresented its financial condition at the time of the move.

Kemper Re meanwhile has launched a separate request for judicial review in Bermuda based on a January ruling by the Massachusetts Supreme Judicial Court that state regulators had no authority to allow the move and that EMLICO remains a Massachusetts company (*BI*, Jan. 12). A hearing on these proceedings is scheduled for Aug. 31.

Last week, the Privy Council, which serves as Bermuda's highest court of appeal, also refused to rule on whether EMLICO's Bermuda liquidators were proper parties to the Kemper Re appeal given the Massachusetts high court decision. Kemper Re had tried to raise the impact of the Massachusetts ruling as a preliminary issue, but the Privy Council said it lacked jurisdiction because the issue was not being raised on appeal from a lower court (*BI*, March 30).

The Privy Council noted last week that the matter of whether EMLICO continues as a Bermuda company "remains open for argument in the courts of Bermuda."

FHS sells workers comp units

LOS ANGELES—Foundation Health Systems Inc. has announced a definitive agreement to sell its workers compensation insurance companies to Superior National Insurance Group Inc. for \$290 million in net proceeds (*BI*, Feb. 16).

The transaction is expected to close in the third quarter, subject to the approval of regulators and shareholders of Calabasas, Calif.-based Superior National.

Woodland Hills, Calif.-based FHS's workers comp business, which generated about \$500 in net premium volume in 1997, includes California Compensation Insurance Co., the state's largest private insurer; Business Insurance Co., which writes workers comp coverage in 42 states outside California; and Combined Benefits Insurance Co., licensed in California for workers comp and accident and health.

FHS Chairman and Chief Executive Officer Dr. Malik M. Hasan said in a statement that he is pleased with the sale. "These operations were clearly not a fit with our health businesses but will now be part of a highly successful insurance operation. Our capital will be more effectively deployed elsewhere."

Age-discrimination bills pass

SACRAMENTO, Calif.—State lawmakers last week approved two bills that would negate court rulings that held employers can legally replace higher-paid employees with younger, lower-paid workers.

The California Supreme Court last fall let stand an appellate court decision that employers would not violate age discrimination laws if they replaced older workers for economic reasons (*BI*, Nov. 3, 1997).

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Errors & omissions

- To correct a May 4 article on retiree health care funding: Section 401(h) was added to the Internal Revenue Code in 1962, and has since been used by employers to fund retiree health benefits. Employees' federal deferrals to 401(k) plans cannot be diverted to 401(h) accounts. Federal law limits 401(h) contributions to 25% of total contributions to a pension plan, including the 401(h) portion.

- To correct an April 27 report on Risk Management Honor Roll member James E. Green, he worked for the Fort Worth Police Department, and Justin Industries Inc.'s headquarters is in Fort Worth.

- Contrary to information in an April 20 article, some worksites with more than 10 but fewer than 60 workers will be subject to comprehensive safety inspections under the Occupational Safety and Health Administration's interim inspection program.

Comp panel criticized

California employers argue makeup benefits labor, attorneys

By ROBERTO CENICEROS

SACRAMENTO, Calif.—California employers are questioning the fairness of a state commission that is calling for an increase in workers compensation benefits.

The panel is urging state lawmakers to raise scheduled permanent partial disability benefits, based on the findings of a controversial RAND Corp. study commissioned by the panel that found the benefits were inadequate.

Employer groups opposed to the increase contend that the eight-

member Commission on Health and Safety and Workers Compensation is politically stacked against them, even though state law says the commission must evenly represent employers and workers. Because of the alleged imbalance, some employer groups contend, the commission's actions are assisting labor and plaintiff attorney efforts to increase workers comp benefits.

The commission voted April 16 in favor of a resolution stating that out of a commitment to produce "a more equitable system"

and adequately compensate California workers, the commission "recognizes the need for the Legislature to enact an immediate increase to at least begin to remedy the problem documented by RAND."

The CHSWC, which did not specify the amount of increase needed, last week held an executive briefing in which RAND representatives presented its findings to legislators and their staff.

The commission is an advisory body, but some California em-
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Montana showcases problem in work comp records privacy

By MEG FLETCHER

HELENA, Mont.—A continuing controversy in Montana over broad disclosure of workers compensation claimants' medical records illustrates the complexity of the problem and possible solutions for employers and policymakers nationwide.

At the very least, the Montana controversy should put policymakers and employers on notice about workers' heightened sensitivity to the privacy of personal

medical files, worker representatives say.

The dispute also should prompt employers and policymakers to review release forms within their jurisdictions for appropriateness, observers say.

The key question for workers, employers, insurers and regulators in this debate is how to balance the need to know against the need to protect personal medical information.

That question is being asked by Congress as lawmakers consider

several health care privacy bills designed to increase the confidentiality of patients' medical records (*BI*, April 27). It is also being asked by the National Assn. of Insurance Commissioners, which is drafting a model act to guide states in developing their own laws (*BI*, March 30).

In both forums, representatives of patients and workers are pressing for more rules to protect the confidentiality of their individual medical records.

See Montana on page 66

RRG a casualty of soft market
Appliance group in runoff

By JERRY GEISEL

DES MOINES, Iowa—One of the first risk retention groups licensed under the 1986 federal law that permits them is ceasing operations and running off business.

Appliance Manufacturers Assurance Co. Risk Retention Group, licensed in Iowa in 1987 to provide product liability and general liability coverage to home appliance manufacturers, is a victim of the soft market, according to its administrator and state Insurance Department officials.

When AMAC was conceived, home appliance manufacturers couldn't get the limits they wanted at any price, said James Dunn, account executive with Des Moines, Iowa-based Kirke-Van Orsdel Inc., which served as AMAC's administrator.

More recently, though, risk retention group policyholders have been able to purchase better coverage at lower rates in the commercial market, compared with coverage provided by the risk retention group, Mr. Dunn added.

While the highly competitive market was the key factor in the decline of the group, consolidation and mergers among policyholders also played a role.

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Lower volume is likely: Buffett

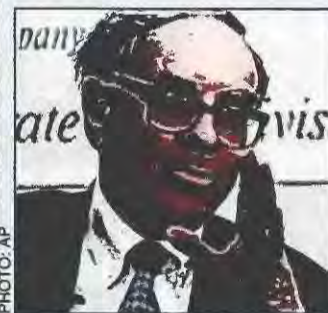
By RODD ZOLKOS

OMAHA, Neb.—The development of catastrophe bonds and insurance derivatives will likely cut into the volume of Berkshire Hathaway Inc.'s super-cat reinsurance business in the next few years.

But, according to Berkshire Hathaway Chairman and Chief Executive Officer Warren E. Buffett, the company won't cut reinsurance premiums below appropriate levels just to maintain its current volume of business.

Mr. Buffett discussed Berkshire's insurance business, the company's other holdings, his bridge playing and more while spending the better part of the day May 4 taking questions at Berkshire's annual shareholders meeting in Omaha, Neb.

At Mr. Buffett's side at the annual in-May event, which this year drew 11,000 Berkshire shareholders to Omaha's Ak-Sar-Ben Arena, was Berkshire Vice Chairman Charles T. Munger, intro-
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Mr. Buffett

Inside

- Names are wrong to call for the ouster of Lloyd's chief executive, who suggested changing the market's capital structure, this week's editorial says. **PAGE 8**

- A Canadian-Swedish mining company is covered for a pollution incident in Spain but does not yet know the amount of damage. **PAGE 57**

- Just a few sessions of psychotherapy can significantly help employees who suffer from major depression, according to an employer and its EAP. **PAGE 63**

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Debate takes on insurers' compensation of brokers

By GAVIN SOUTER

SAN DIEGO—Policyholders should be told of any compensation insurance brokerages get from insurers, a risk manager contends.

Even better, brokerages should not charge insurers contingent commissions for bulk business at all, she said. If brokerages think their current fees and commissions from policyholders are insufficient, they should increase them rather than seek extra compensation from insurers, she said.

Brokerage executives disagreed. Policyholders benefit from the strong relationships that brokerages forge with insurers, said one brokerage executive. And the contingent commissions compensate brokerages for services they provide to the insurers, such as product developments, said another.

This was just one of a wide range of issues concerning consolidation in the insurance industry discussed at a debate during the 36th Risk & Insurance Management Society Inc. annual conference recently in San Diego.

Other issues taken on by the panel of two brokers, two insurers and a risk manager included the reasons behind the recent spate of insurer consolidations, the prospect of further consolidation, and the quality of insurer and brokerage services.

The issue of contingent compensation should be out in the open, and all risk managers should be aware of the payments brokers often get from insurers in addition to the fees and commissions paid by policyholders, said Susan Meltzer, assistant vp-insurance and risk management at Sun Life Assurance Co. of Canada in Toronto.

Some insurers pay brokers contingent commissions based on the volume and on the profitability of certain books of business.

"I don't have a basic problem with volume commissions; what I have a problem with is that these arrangements have not been disclosed," she said.

Brokers represent policyholders, so all of their compensation should be paid by policyholders, Ms. Meltzer said. "This is not an excuse to pay brokers less. I would be willing to increase my fees and commissions in order to bring the control of costs and broker compensation to the risk manager," she said.

But strong relationships between brokerages

See Debate on next page



PHOTOS: MICHAEL MARCOTTE

The 36th Risk & Insurance Management Society Inc. annual conference in San Diego enabled risk and insurance professionals to further their knowledge of risk management and employee benefit issues, as well as meet industry service providers.

Legal rule change would hurt policyholders, attorney says

By DAVE LENCKUS

SAN DIEGO—Liability insurance policyholders should be outraged at a pending legal rule that would undermine the allegiance of their defense attorneys, a policyholder attorney contends.

The rule, which the American Law Institute is expected to approve Tuesday, in many cases could make policyholder defense attorneys equally beholden to the insurers that hired them to fend off underlying liability lawsuits against policyholders, the attorney says. For nearly a century, while insurers have paid for their policyholders' defense, only the policyholders were considered clients of the attorneys.

Insurers have strongly lobbied for the ALI rule, because it would give them access to information they could use to deny coverage and even a defense for more claims than they already fight, according to policyholder attorney Eugene R. Anderson, a partner at Anderson, Kill & Olick P.C. of New York.

Mr. Anderson also complained that the planned procedure to adopt the rule does not give policyholders adequate opportunity

to block it.

"This is an outrageous sneak attack" on policyholders, Mr. Anderson said during a session at the recent Risk & Insurance Management Society Inc. annual conference in San Diego.

A Vanderbilt University law school professor acknowledged that the new rule could create some problems.



But, overall, the rule can benefit both insurers and policyholders because it would reduce litigation and, as a result, insurance costs, said Kent D. Syverud, a Vanderbilt law school dean and a Garner Anthony professor.

Representatives of the ALI said in separate interviews that policyholders have long had an opportunity to comment on the proposed rule. One representative said the rule more accurately describes—but does not actually change—the relationship among policyholders and their defense attorneys and liability insurers.

The Philadelphia-based ALI is a highly influential group of

lawyers, judges and law professors that promotes the clarification and simplification of the law in an effort to better accommodate society's needs. To that end, the group, which was established in 1923, drafts and publishes restatements of the law in various areas, model codes and other legal reform proposals.

While the ALI's restatements of law and other proposals are not binding, the group is highly authoritative, and its work is widely followed.

The proposed rule governing attorneys' obligations and relationships to third parties that could affect the attorneys' representation of their clients is laid out in Section 215 of the ALI's third restatement of the law governing lawyers (BI, Sept. 9, 1996).

The restatement actually is the ALI's first attempt to develop a national standard of professional conduct for lawyers. The rules are based on both the most basic and common regulations that states have adopted and some case law, according to Thomas Morgan, a professor at the George Washington University Law School in Washington. Mr. Morgan was in-
See Lawyers on page 28

Wanted: Qualities in a risk manager

Skills needed will vary, panelists say

By MICHAEL BRADFORD

SAN DIEGO—Is the ideal risk manager a Renaissance person, a generalist, a specialist or someone outside the company?



A panel at the Risk & Insurance Management Society Inc.'s annual conference discussed the qualities that companies should look for in a risk manager and whether the job is better left vacant.

Their conclusions? Decide for yourself.

"One of the hot discussion topics today in risk management is the whole area of holistic risk management" or "enterprise-wide risk management," said James V. Davis, chairman of Advanced Risk Management Services, a Nashville, Tenn.-based division

of Willis Corroon Corp.

If those styles of managing the entire risk of a corporation become "much more common, then in fact they are going to call for a risk manager with a different skill set" from the one used by today's risk managers, Mr. Davis said.

Risk managers whose responsibilities are enterprise-wide will need very strong oral and written communication skills, he explained. A criticism of many risk managers is that they do not know how to communicate with senior management without getting tangled up in insurance jargon, he said.

Mr. Davis said his idea of "the risk manager of the future" leans toward someone who is "a good business-person... a generalist in the sense that an individual who would function as a chief risk officer has got to know a lot across the scope of the entire organization about how his or her firm
See Qualities on page 36

Debate

Continued from previous page and insurers provide benefits to policyholders as well as to the brokerages and insurers, said J. Patrick Gallagher Jr., president and chief executive officer of Arthur J. Gallagher & Co. in Itasca, Ill.

"Where we have built volume with an insurance company, we have a better relationship," he said. And as a result of that better relationship, brokers are more able to help ensure that claims are paid and any problems between insurers and policyholders are solved, he said.

"I don't think there is anything wrong with being compensated for that," Mr. Gallagher said.

Additionally, brokers provide services to insurers, and that is reflected in the contingent commissions, said

John T. Sinnott, vice chairman and CEO of J&H Marsh & McLennan Inc. in New York.

For example, brokers provide "intellectual capital" and produce development services to insurers. It is only fair that insurers, not policyholders, should pay for those services, he said.

Contingent commissions are a reality of the marketplace, said Jay S. Fishman, CEO of the commercial lines division of Travelers Property Casualty Corp. "It is an area where you as customers will make decisions on what value is and what value isn't and whether you are being well served," he said.

However, policyholders should be informed about the payments, Mr. Fishman said. "As long as it's all above-board, we don't have a problem with it," he said.

On the other hand, Liberty Mutual Group does not pay contingent com-

missions, said Edward G. Troy, executive vp and manager of national accounts at the Boston-based insurer. "We've made the decision that we don't pay insurance brokers," he said.

The issue of contingent commissions has come to a head with the increased consolidation of the brokerage industry over the past few years.



That consolidation has led to increased clout for the largest brokerages.

Consolidation of the whole industry is likely to continue, said Mr. Troy. "There's been more changes in the past five years than we'd seen in the 20 years before that, but fasten your seat belts, because I think it is going to continue," he said.

Insurers and brokerages both need to be large in order to invest in technology and to extend their global reach, Mr. Troy said.

The need to have substantial capital was the driving reason behind the sale of the former Johnson & Higgins to Marsh & McLennan Cos. Inc., said Mr. Sinnott of J&H Marsh & McLennan.

Other reasons behind the continued consolidation include the slow revenue growth and substantial excess capital most insurers currently have, said Mr. Fishman of Travelers. "It will take additional consolidation for the marketplace to correct itself," he said.

Risk managers think the marketplace also could improve some of its services, according to the results of a survey of risk managers' views on service providers released by RIMS at the conference (BI, May 4).

The quality score card was devel-

oped by RIMS and the Quality Insurance Congress. Overall, brokers and insurers received low marks in satisfaction and performance.

Travelers ranked average for satisfaction and above average for performance but still was "disappointed" by the results, Mr. Fishman said. "Just wait 'til next year," he said.

J&H Marsh & McLennan ranked below average for both satisfaction and performance. Mr. Sinnott would not comment on the survey, saying it had come out only the day before the debate and he had not yet read it. "But listening to clients is very important, and we will listen to all the feedback that we get," he said.

Arthur J. Gallagher was not ranked in the survey, as there were too few responses that mentioned the brokerage. Mr. Gallagher said he was disappointed in the way the survey was conducted and analyzed.

The survey obtained only enough information to rank five brokerages, Mr. Gallagher noted. And, he said, as any survey of this kind should contain a 5% deviation, it did little to measure any differences among the brokers. The difference in marks among the top four brokerages was not more than 10 points for both satisfaction and performance.

Stephen M. Wilder, RIMS president during 1997-1998 and vp-risk management at The Walt Disney Co. in Burbank, Calif., moderated the debate. **BI**

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Executive Council elected

SAN DIEGO—Three new members are serving on the Executive Council of the Risk & Insurance Management Society Inc.

Elected at the society's annual conference in San Diego were: Margaret Accordino, assistant director of corporate insurance at Travelers Group Inc. in New York, who is vp-education and professional development; Christopher Mandel, senior director of risk management at Tricon Global Restaurants in Louisville, Ky., who is vp-external affairs; Roger Andrews, general counsel/direc-



tor of risk management at E.D. Bullard Co. in Provo, Utah, who is vp-treasurer.

Re-elected to the council were: Diane Wolfson, director of risk and insurance at Domtar Inc. in Montreal, who is vp-conferences; David L. Mair, risk manager for the U.S. Olympic Committee in Colorado Springs, Colo., who is vp-international affairs; Georges Balcer, director of risk management at Bowater Inc. in Greenville, S.C., who is vp-governance and secretary; Karen Fleming, manager-risk management at Bell Atlantic Corp. in Arlington, Va., who is vp-member and chapter services; David R. Haight, former director of risk management at CF Industries Inc. in Long Grove, Ill., who is vp-long-range planning.

The Executive Council also includes Mark A. DeLillo of Celotex Corp., and Susan R. Meltzer of Sun Life Assurance Company of Canada.

Alternative options, volume to grow: Panel

By **RODD ZOLKOS**

SAN DIEGO—As risk managers and their companies expand the way they look at risk, growth in all types of alternative risk financing techniques appears inevitable.

And, according to panelists discussing real-life experiences in alternative risk financing at the recent annual conference of the Risk & Insurance Management Society Inc. in San Diego, the spectrum of risk transfer options is destined to expand as well.

Risk securitization, which so far has been the province of insurers and reinsurers, likely will begin to be used by commercial insurance customers, while other policyholders will continue finding ways to place previously

uninsurable risks in integrated risk financing programs.

"My sense is, before the year is over, there will be securitization solutions, financial product solutions for commercial clients," said David N. Fields, senior vp at AIG Risk Finance in New York.

The nature of risks placed into the capital markets will expand beyond the catastrophe exposures transferred to the capital markets in deals over the past year by United Services Automobile Assn., Swiss Reinsurance Co. and others (*BI*, Oct. 30, 1997).

"We started on what in my view has to be the hardest place to start on the spectrum: hurricane and earthquake," said Michael J. Normile, managing director in the Structured Finance

Group at Merrill Lynch & Co. in New York.

"This year in our estimates we will see between \$4 billion and \$6 billion in insurance risk coming into market," Mr. Normile said. "A portion will be catastrophe risk, but a greater

portion will be all the other types of risk."

"Risk managers are either being challenged by their top management or should be challenging themselves to think more broadly about risk," said Paul T. Pope, assistant treasurer-

risk management at TRW Inc. in Cleveland.

Cleveland.

At TRW, that meant assembling a multiyear, multiline program, said Mr. Pope, who moderated the session.

In the future, more programs will be structured to accommodate multiple risks, he suggested, and new risks will become candidates for integration in those programs as better ways of analyzing them are developed.

Still, he thinks a move toward increased use of multiyear, multiline programs and other alternatives won't occur overnight.

For those attempting any of the various alternative risk financing options, it's important to approach the deal with clear, realistic objectives and a full understanding of exactly what the company hopes to accom-

plish, said Martin H. Scherzer, managing director at J&H Marsh & McLennan Inc. in New York. He coordinated the session.

Because the transactions are complex and take a relatively long time to put together, attempting one without a clear understanding of the organization's goals can result in wasted time and resources.

"When these things drag on, good things don't occur," Mr. Scherzer said. "Only bad things occur."

"We have lost more alternatives that didn't close not to a competing broker or insurance company or alternative service provider, but to the client deciding to do nothing at all," Mr. Scherzer said.

If a deal is to succeed, the company also has to have loss exposures that could materially affect its performance, so that senior management will be sufficiently worried about the exposure to devote the time and resources needed to find a solution.

It also helps if there are no viable traditional solutions.

"We are very strong advocates of cost-effective insurance," Mr. Scherzer said. "It's clean; it's easy; people understand it very well."

But, he said, "Sometimes what may be a simple solution for the financial services market may be a complex solution for the insurance market." In those situations, the key is to go where the solution is simplest, he said.

The company also must be ready to deal with the tax, accounting and regulatory hurdles that inevitably are part of many alternative risk financing deals.

Companies can do various things to try to maximize their chances of getting favorable tax and accounting treatment in alternative risk financing transactions, noted James R. Cameron, a partner in the Baker & McKenzie law firm in New York.

For example, with integrated programs that combine coverage of several different risks in a single package, "you want to make sure you have evidence that you can't buy these products separately, that you have to bring them together," he said.

"Also, please, please look at the wording. Make sure the wording mentions the word, 'premium,'" Mr. Cameron said. Otherwise, the Internal Revenue Service may challenge deductions for these risk financing costs.

Among the various reasons for the convergence of the insurance and capital markets, Mr. Fields said, a key one is that financial and operational risk management are not independent disciplines. "All of this stems from the fact that essentially risk is risk," he said.

In that context, companies can use structured financial programs to protect their balance sheets, protect income statements or insure solvency, Mr. Fields said.

The "risk is risk" view seems to apply to both sides of the transaction, Mr. Normile said.

With the development of mortgage-backed securities, derivatives and credit card auto loan-backed securities, a new group of investors also has developed which assesses risk in much the same way as the insurance industry, he said.

"What has happened since the 1970s is the development of a whole universe of people who think like we do," Mr. Normile said. "What's remarkable is it took us so long to look over the fence and see each other."

Now that those capital market investors are viewing insurance risk in that fashion, they may well look for other ways to expand their presence in that investment arena, Mr. Normile suggested.

"We will see investors who say, 'My best play here to get involved in this business is to go out and buy a reinsurer,'" he said.

BI

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Opinions

Adversity equals opportunity

IF THE PAST FEW YEARS at Lloyd's of London have shown us anything, it is that change is not necessarily a bad thing for the market.

Lloyd's has undergone enormous changes in an effort to distance itself from the disastrous losses of the late 1980s. Witness the introduction and expansion of corporate capital, the creation and successful launch of Equitas Ltd., reform of regulatory procedures and new faces in management, among many others.

Against this tumultuous backdrop, Lloyd's has turned around its fortunes and posted some of its most profitable underwriting years ever. As we report on page 1, Lloyd's has earned a global profit of £1.15 billion (\$1.93 billion) for the 1995 underwriting year. That comes on the heels of a £1.1 billion (\$1.88 billion) profit for 1994, and £225 million (\$349.4 million) for 1993. Those profits followed a five-year string of losses totaling nearly £8 billion (\$12.56 billion).

In spite of the recent profitability, which demonstrates the market's resilience, some individual names last week were calling for the ouster of Lloyd's chief executive for having the temerity to suggest that Lloyd's alter its capital structure from an annual venture to an ongoing enterprise.

Under its annual venture structure, Lloyd's recapitalizes its syndicates each year, reinsuring into the coming year the current year's liabilities.

We agree with Ron Sandler, however, that Lloyd's needs to modernize this anachronistic capital structure.

In unveiling the proposal last month, Mr. Sandler said, "There are many who regard the annual venture as the principal reason why Lloyd's is losing its competitive edge," because it is costly in terms of administration, legal aspects, lost investment opportunities and regulation (*BI*, April 20).

Mr. Sandler also noted that without more permanent and long-term capital commitments, the market is missing out on an opportunity to underwrite more multiyear contracts. In the continued soft market, buyer demand for multiyear and multiline contracts creates a prime source of income for insurers. While some Lloyd's syndicates have been writing these policies for several years, the ability of more to do so would be enhanced by longer-term capital commitments.

Rating agency A.M. Best Co. last week also singled out the annual venture as a negative rating factor for the market. "This procedure adds considerable cost



and creates a 'drag' on earnings," Best said.

The names who had called for a no-confidence vote on Mr. Sandler—no vote ultimately was taken at last week's Lloyd's Council meeting—ignore these arguments for change and instead only see the proposal as an attack on the status quo. Already threatened by the greater resources of corporate members, these individual names see the proposal as an attempt to drive them out of the market once and for all.

Perhaps that change is the very thing Lloyd's needs to move into the future with hopes of continued profitability. Lloyd's has clearly demonstrated that it can survive—indeed, thrive—without the same level of backing from wealthy names it has historically enjoyed. Traditional unlimited liability names accounted for 39% of Lloyd's £10.13 billion (\$17.01 billion) in capital for 1998 (*BI*, Feb. 2), compared with 100% of the market's capital as recently as 1992.

Individuals would not be shut out of Lloyd's as investors, as they could buy shares in investment trusts, pooling arrangements or corporations that invest in Lloyd's. Shareholders would not carry the same level of risk as Lloyd's unlimited liability names.

The bitter court battles with members over their losses, the wrenching birth of Equitas and what appears to be a perpetual row over alleged affronts to Lloyd's traditional members makes one wonder whether they are worth all the fuss.

Letters

Risk manager must lead quality service

To the editor: Fourteen years ago, when I first entered the "client" end of the professional risk management field, I might have agreed with the results of the quality score card developed by the Risk & Insurance Management Society Inc. and the Quality Insurance Congress (*BI*, May 4).

Today, after endless changes in my approach to management and the support of some select individuals, I can only wonder, who is really scoring poorly?

To suggest that risk managers are generally dissatisfied with the performance of vendors is an admission that we failed to provide the necessary leadership qualities, the clear direction and metrics to define expectations and then fairly measure performance.

I have worked with most of the large brokers, many of the third-party administrators and nearly every major insurer during the past decade. One of the first

questions I had to ask myself was why wasn't I getting what I wanted and needed? The answer was simple: I was not managing effectively.

With that realization, endless changes were set in place. Contracts were created to clearly define my company's expectations of broker services. Both parties signed on to this agreement.

A process that we call "pending items meetings" was created, scheduled and strictly maintained to measure the performance of each party responsible for providing a "task"-oriented service. The standard was simple: done right and on time. Our brokers were given the latitude to set reasonable completion dates for each task, and then they were held to that. A score card was created to measure that performance.

In the beginning, the scoring was poor. Over time, though, it improved dramatically as everyone learned what was expected and when. People actually

like working under clearly defined direction.

It is also important to understand that many tasks required the effective management of others, i.e., underwriters, TPAs, loss control experts, claims management people, etc. Everyone involved had to learn to become a better manager.

Can you change the insurance industry? The answer is a clear and resounding "yes!"

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See Letters on page 60

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Risk mapping helps in visualizing exposures

By ROBERTO CENICEROS

SAN DIEGO—Risk mapping can help identify a company's exposures, determine the interrelationships among those risks and aid in determining which risks to mitigate or transfer, two risk managers say.

Risk mapping is a relatively new tool and an effective preliminary step for integrating a corporate risk management strategy, said James D. No-

ble, director of corporate risk management and insurance for Colgate-Palmolive Co. in New York.

Risk mapping also can heighten management's awareness of an organization's risks, identify inconsistencies in an overall approach to risk, and allow the adjustment of costs and profitability-based risk measurement.

Mr. Noble, with the help of about 30 consultants from J&H Marsh &

McLennan Inc., began the risk mapping process for Colgate about a year ago, he said during a session at the



Risk & Insurance Management Society Inc.'s recent conference. Among other things, Colgate found where its risks are clustered and that it is

rather conservative in its risk-retention approach.

Strategies for risk mapping will vary from organization to organization, advised Kenneth Zignorski, global risk financing and consulting group leader-strategic risk management for J&H Marsh & McLennan Inc. in New York. It is an art form and a visual way to view risk, he said.

"There is no one right way to do a process called mapping your risks,"

Mr. Zignorski said. "There are a whole bunch of different ways you can think about doing it. You want to see the risk relationships."

The process can begin with a simple "Pin the Tail on the Donkey" approach, by first placing one risk on a chart and then pinning all of the company's remaining exposures on the chart. Their placement will depend on their frequency, severity and relationship to each other.

The charts typically used for risk mapping have an X axis and a Y axis with frequency and severity running along opposite axes. Both insured and uninsured risks can then be placed in one of the four quadrants. The quadrants can be determined by any combinations of high and low frequency and severity.

In that way, risk managers can get a visual look at the frequency and severity of a variety of exposures facing their companies, including political risks, economic risks and even competitor and technology risks, such as those presented by technology obsolescence.

As a further step toward integrating risks, risk managers can overlay financial strategies for managing their exposures over their risk mapping charts. They also can evaluate speculative risks and determine whether some risks may help a company's earnings.

One crucial step in risk mapping involves interviewing a broad variety of company operators in numerous departments to get their view of risks facing the organization. These range from the president, to the director of strategic planning, to the head of business unit operations, to the purchasing department manager.

That process can bring together more managers throughout the company and make them aware of corporate-wide risks and how those risks interact. The survey process alone is worth the effort, said Kalman Besenczky, group leader-risk and insurance management for Arizona Public Service Co., a utility company in Phoenix.

"In one of our discussions with our CFO, one of his comments was that even if we did absolutely nothing different, just presented the concept of total leadership of management, break down barriers and get everybody to think strategically on how each area impacts the other and how it is all interrelated, that would have all been worth it," Mr. Besenczky said.

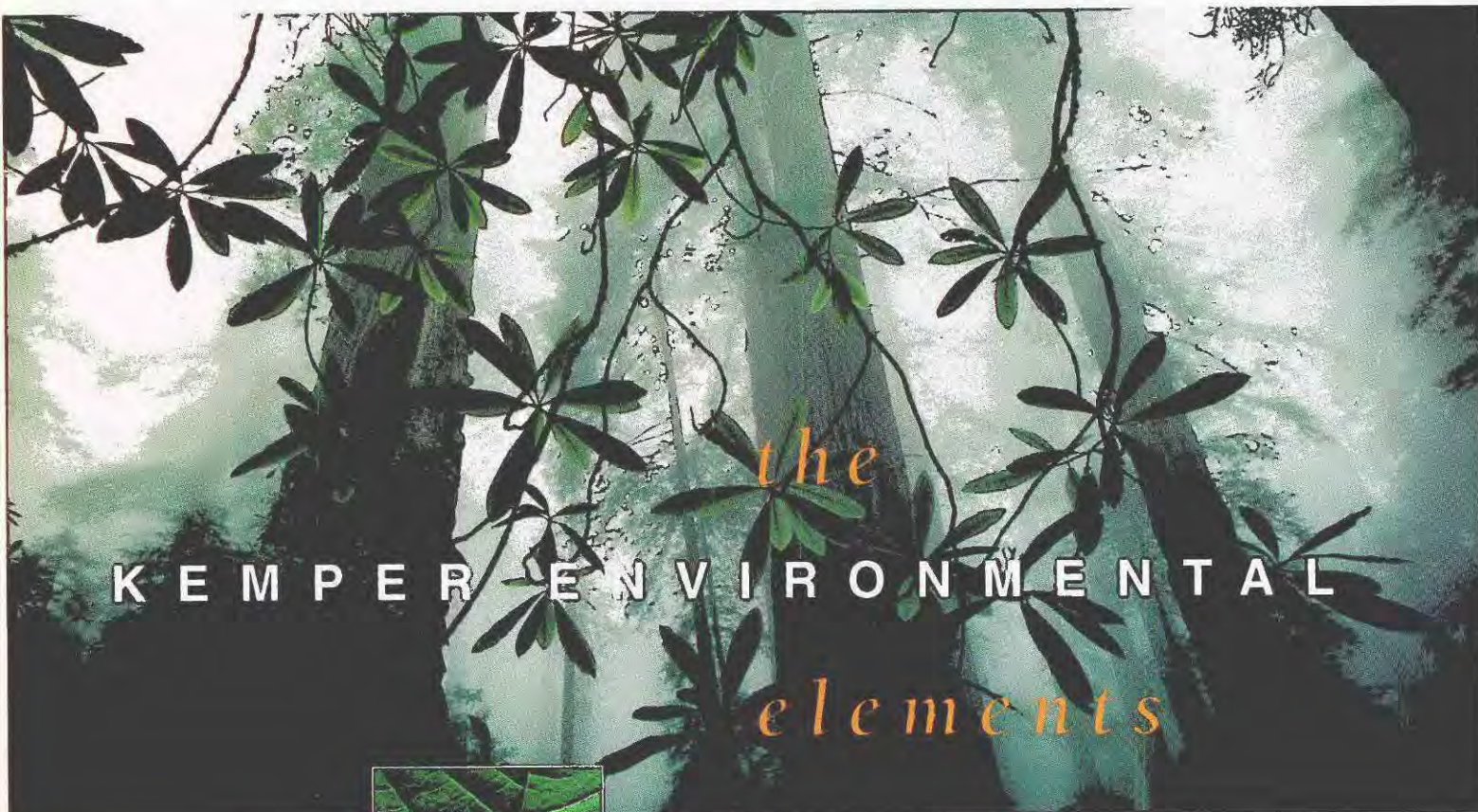
The need to look at risks from a holistic standpoint would have been plenty of reason to embark on risk mapping, he said. But deregulation of the utility industry presented the real catalyst for APS to want to better understand its risks.

The process can shed light on exactly what percentage of risks are not covered by insurance and where insurance stops while the risks continue, the presenters said. Risk managers who embark on the process also can learn more about the potential severity of exposures facing their companies, as one exercise calls for researching outside data to learn more about the losses large catastrophes have caused.

The process also can help policyholders improve cooperation between themselves and insurers, as policyholders will be better able to explain exactly the coverage they need.

"But hopefully you are in it together (with your insurer) and not just using risk mapping as another way to market the account and shop it around," Mr. Noble said. "It's a strategy for your company."

The risk mapping session was presented by Mr. Noble and Mr. Besenczky. The session was coordinated by Mr. Zignorski. **BI**



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Theft prevention: How to keep on truckin'

By MICHAEL PRINCE

SAN DIEGO—If a company ships goods overseas, risk managers need to be aware of the risk of loss from hijackings and theft, say two speakers who know from experience.

Although such risks exist, preventive measures can limit exposures and cut down on losses, they add.

The speakers, David Walls, a Malvern, Pa.-based account vp for Arkwright Mutual Insurance Co., and Richard Broderick, director-risk management and real estate for VF Corp. in Wyomissing, Pa., presented a plethora of problems experienced while shipping goods

to, from and within Mexico and Europe.

The discussion, during a session at the recent annual conference of the Risk & Insurance Management Society Inc. in San Diego, struck a chord with the risk managers in attendance, turning the session into an unplanned open forum where problems and innovative solutions were discussed. The discussion could not be contained within the time allotted for the session, so it was continued in a lunchtime gathering the next day, and the risk managers planned for further exchanges of ideas after the conference ended.

Messrs. Walls and Broderick said a comprehensive transportation

policy should be instituted. Mr. Broderick emphasized that theft of goods is not an issue only insurance can address. Instead, it requires a loss-prevention program involving



senior management. Stolen goods not only hurt a company's bottom line but also injure relations with customers who rely on timely shipments of the goods, he said.

"This needs to be a corporate bottom-line issue and might impact market share," he said.

The risks with shipping vary greatly with the shipping method,

said Mr. Walls. Shipping by truck presents the greatest risks, while air shipping is safest. Trucking goods, however, is the most economical method and the one generally used.

Another important risk factor is whether the goods are shipped by the company or by a common carrier hired for the job. "If you have more hired (carriers) than owned, your risks will be greater," Mr. Walls said.

The type of goods also contributes to the risks involved. For example, Mr. Walls worked with Mr. Broderick because the garment manufacturer was experiencing high losses with stolen jeans in Mexico and Europe. Jeans present

a more attractive target, as they are easily sold on the black market. Conversely, machine tools or other equipment with limited resale value will generally command less attention from thieves.

But Mr. Broderick added that he has heard of times when container trucks have been stolen not for their contents but for their structure, which then is converted into housing.

Another risk is the time spent on the road. Goods shipped from a warehouse to a nearby purchaser are less at risk than goods traveling long distances. "The longer it's on the road, the risks are greater," Mr. Walls said.

By not fixing responsibility on the shipper, a company also has a risk, Mr. Walls said. One way to address this problem is to use one shipper. This gives the company added clout with the chosen shipper, allowing it to then negotiate a better contract that makes the shipper more accountable for thefts. If the goods are sold to another company, it's a good idea to require the buyer to ship the goods itself or to take full responsibility for any stolen items.

A drawback with consolidating with one carrier is the greater reliance placed on it. A strike at that carrier could cripple an operation, he said. A backup plan is therefore necessary. "Think about what might happen if they don't ship," he said.

Mr. Broderick emphasized the importance of working with all the divisions of a large company such as VF Corp. Each division should assume the losses for its own stolen goods, making it more likely to enact changes, he said. Involving all divisions also will allow the risk manager to collect information on bad shippers and share this with the entire company. He emphasized that even a company without divisions should keep track of shippers with repeated losses and not use them.

"Let them know you are creating a bad list of drivers and carriers," Mr. Walls said.

Knowing how each division ships products helps reduce losses, Mr. Broderick said. For example, manufacturing plants ship goods to other manufacturing plants differently than warehouses ship to customers. A plant will ship in larger loads, while a warehouse might ship small amounts to many different places. Each type of shipping has its own needs and might use different shippers. And even if a comprehensive shipping policy is in place, a risk manager needs to periodically visit a company's various locations to ensure that the policy is being followed.

A strong loss-prevention policy can greatly reduce the risks of theft and increase the company's bottom line, while making customers happy.

Perhaps the most important part of the policy is conducting background checks on shippers and drivers for any history of hijackings. "This is probably the first thing you should ever do," Mr. Broderick said.

He also recommends risk managers visit the carrier's shipping depot and inspect its procedures and security arrangements. "You want to see that they are exercising good care of your product," he said.

One easy approach to countering theft is to not label boxes. Plain boxes don't advertise that they contain valuable items to steal. "It's a definite benefit in Mexico and parts of Eastern Europe," Mr. Broderick said.

See Theft on page 16

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Theft

Continued from page 14
 "We found it helps a whole lot." Implementing such a strategy requires senior management's input, as marketing departments prefer to label the boxes for advertising purposes, they said.

But shipping in plain boxes helps prevent only small-time pilfering. When entire truckloads are involved, different but equally simple approaches may help.

A good strategy is to make sure the trucks are full of fuel before leaving. Mr. Broderick called this the best common sense idea he knows. When truckers stop for gas, they become vulnerable to hijacking. Also, if you provide money for gas, there is no guarantee it will be used that way; the driver

might pocket it.

Keeping cargo moving over known routes on fixed schedules also reduces losses, Mr. Walls advised. "Cargo at rest is cargo at risk," he said.

Make sure schedules are set so that deliveries don't occur on weekends, on holidays or late on Fridays. Shipments that arrive when the receiver isn't open means the goods sit in the truck and are vulnerable to theft, Mr. Walls said.

He added that part of the shipper's security arrangements should include limiting the movements of the drivers so they cannot roam around, inspecting the warehoused goods. "This is important when the trucks are part of a crime ring," he said, as they could be checking on which goods to steal in the future. **BI**

Alternative market attractive

But guaranteed-cost also grabs attention

By **MICHAEL BRADFORD**

SAN DIEGO—Everything gets boring after a while, even a soft insurance market that has kept coverage costs low and capacity plentiful.

"More than a couple of people have said, 'You know what? I actually wish the market would harden, just slightly, but I wish it would harden,'" recalled Thomas V. Ealy, managing director of Zurich Corporate Solutions in Schaumburg, Ill.

That professional boredom is one reason the alternative market has continued to grow despite the lingering soft market, he suggested, as risk

managers have sought the challenge of structuring state-of-the-art insur-



ance and risk management programs.

Mr. Ealy, speaking in San Diego during a session of the recent Risk & Insurance Management Society Inc. annual conference, said the alternative market—risk retention groups, captives and qualified self-insurance—has grown about 6% per year over the past five years, despite inexpensive coverage prices in the tradi-

tional market.

The boom in alternative markets has left buyers with a "staggering array of choice" in ways to fund their risks, he added.

"We tend to see a wide spectrum of opportunities," agreed Jeffrey M. Bowersock, vp at Centre Solutions in New York. Those opportunities are causing some to look toward alternative risk financing even though their current insurance costs are low and are expected to stay that way.

Companies "are taking a harder look" at their risks, Mr. Bowersock said, particularly when facing a broad range of risks. They are spending a lot of time "thinking about ways to manage those exposures and explicitly identifying alternatives," he added.

But that doesn't mean everyone is choosing the alternative market. Some companies, in fact, are leaving self-insurance programs for bargains in guaranteed-cost programs, said Charles H. Dangelo, president of AIG Risk Management Inc. in New York.

He referred to a large retailer that approached insurers with the idea of dismantling a self-insured, self-administered workers compensation program in order to buy coverage with a rate guarantee.

The company planned to disband its risk management department of 20 to 25 professionals. The company's reasoning was that "since they were going to a guaranteed-cost program, they didn't need that anymore," Mr. Dangelo remarked.

"Their intention was to take advantage of what they felt was an overheated soft market." As a long-term strategy, he said, "I think they're making a mistake."

If the retailer needs to rebuild its risk management department because market conditions change, it will be difficult to do so quickly, Mr. Dangelo said. "I'd like to tell you that that's an infrequent occurrence, but it's not."

It's not necessarily wrong to take advantage of soft-market price breaks, he added, "but you have to do that with a framework that says I'm not going to abandon solid risk management principles, and certainly not dismantle a structure in an organization that's proven to work well" just to realize a short-term gain.

Mr. Dangelo referred to another situation in which a guaranteed-cost program made more sense than the alternative market for a company with no intention of dismantling its risk management program.

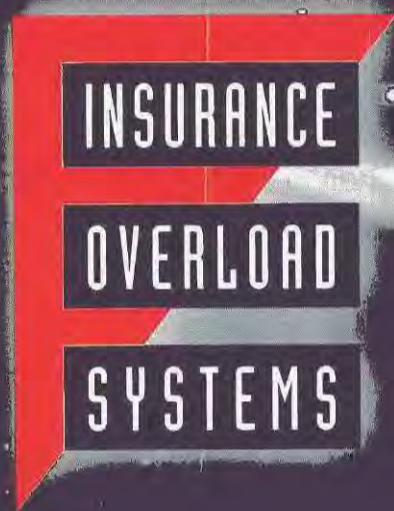
The company, a defense contractor, is profitable but has cyclical earnings. Because it is profitable, the contractor was incurring high tax rates. And it allocated its costs to the government in a detailed and lengthy procedure.

"A guaranteed-cost structure had a lot of attractiveness to them," Mr. Dangelo said.

The relationship entered into a two-year period with an insurer that locked in savings the policyholder had targeted, simplified the cost allocation process, generated a more favorable tax situation and added incentives for the insurer to earn more on the account if loss costs were reduced below the policyholder's goal.

"That two-year period is over, and it did turn out to be a win-win scenario," Mr. Dangelo said. "It fulfilled, totally, the objectives for the risk manager and the company that set the goals," he explained, while the insurer "got a very good return... in light of the resources it put into it."

Mark G. Schneider, director of insurance at Loyola University Medical Center in Maywood, Ill., was the session moderator. Thomas F. O'Connell, senior vp of Arthur J. Gallagher & Co. in Itasca, Ill., was the coordinator. **BI**



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RIMS exhibitors entertain in order to inform

By JOANNE WOJCIK

SAN DIEGO—Vendors of property/casualty products and services at this year's Risk & Insurance Management Society Inc. conference were determined to provide as much entertainment as possible in the exhibit hall to compete with San Diego's legendary sun and fun.

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Whether it was offering rides on a stealth fighter jet simulator, turns at playing an electronic video game or sips of cappuccino or fresh-fruit smoothies, exhibitors did their best to attract attendees to their booths.

This year's exhibit hall included many newcomers, and several longtime vendors expanded their booths to reflect their growing prosperity.

The San Diego Convention Center's exhibition space was filled to capacity, leaving at least 50 prospective RIMS exhibitors on a waiting list. They will have to wait until next year's conference in Dallas to display their wares.

One of the most popular booths at this year's RIMS conference was "TOPGUN." Managed care firm CCN offered RIMS attendees the chance to dress in Marine fatigues and have their photos taken aboard an F-22 simulator similar to that used in the film "Top Gun," shot at the nearby Miramar Naval Air Station. CCN's booth, designed specifically for the San Diego RIMS conference, used stealth fighter illustrations to show how the company "defends against risk."

"We've been returning injured workers back to the job safely and effectively for more than a decade," boasted Terry A. Merryman, communications manager for San Diego-based CCN.

Early in the week, CCN also hosted a hospitality event at Miramar, the birthplace of "Top Gun" and a current training site for both Navy and Marine fighter squadrons.

Zurich Insurance Group also used the theme "Top Gun" for its booth.

Liberty Mutual Group's booth offered RIMS attendees the chance to take rides on a flight simulator into Disneyland's updated "Tomorrowland," which is under construction at the Anaheim, Calif., theme park.

The purpose of the exhibit was threefold, according to John F. Ryan, vp-commercial marketing in the insurer's Boston headquarters.

"The Risk Management Future is Now' is our theme," he explained. "We wanted to have something that would play that theme out, and a quality company like Walt Disney certainly has been defining the future for a long time."

"And at Liberty, we do the same thing. We're building leading-edge products, whether it's financial products, insurance products, service products," he said.

Lastly, "we wanted to create a little excitement," he said.

The ride also encouraged attendees to spend more time at the Liberty booth, according to Mr. Ryan.

"People stop by, they spend a little longer with us because they have things to do. As serious as in-

urance is, there's nothing in our job descriptions that says we can't have fun," he said. "There's a kid in all of us."

"At the same time we get to talk about some very important issues in risk management," Mr. Ryan pointed out.

To illustrate the creative minds at work at ADP Integrated Medical Solutions, the company hired Los Angeles actor Zachary Selwyn to portray a character he created, mad scientist "Dr. Julius Hypenstein III." The doctor, whose wiry mass of white hair and dark horn-rimmed glasses made him resemble the eccentric scientist in the film "Back to the Future," posed for pictures with conference-goers.

"He gets them in here, and then I start talking," quipped Brooke Kane, marketing manager for ADP in Bethesda, Md.

ADP, which is known primarily for its payroll processing and benefit outsourcing systems, has recently begun marketing software products to the property/casualty insurance industry.

For example, at this year's RIMS, ADP was introducing a new claims analyzer and provider bill auditing software program to help claims adjusters contain medical costs in workers compensation claims.

K&K Insurance Group Inc. used video games to draw people into its exhibit, illustrating the company's reputation as an entertainment underwriter. K&K is a managing general agent for TIG Insurance Group of Dallas.

"Everything that we do is what we call programs," explained Todd W. Bixler, executive vp and chief operating officer for the Fort Wayne, Ind.-based MGA.

"So everything all through here is all the different programs, or the different types of business we write," he said, motioning to the free-standing electronic gaming equipment around him.

While in the past, most of the entertainment-related risks that K&K wrote were on a surplus lines basis, today's soft market is making it possible for the MGA to provide coverage on a mostly admitted basis, according to Mr. Bixler.

"K&K started going admitted about 15 years ago," he said. "We kind of led the way to going admitted, and now most of our competition has followed."

To illustrate its proactive approach to health and safety, Kaiser on the Job, a division of the nation's largest health maintenance organization based in Oakland, Calif., attracted risk managers to its booth with fruit smoothies.

Once there, risk managers who discussed workers compensation medical treatment management and loss control services were given plastic rulers about the size of computer keyboard templates as a sample of the kind of services Kaiser provides. One side of the rulers illustrated exercises to perform while sitting in an office chair, and the flip side concentrated on hand motions to prevent such keyboard-related injuries as carpal tunnel syndrome.

Several other exhibits also focused on ergonomics and workers compensation loss control.

"We are used a great deal in 911 centers for 24-hour use because our chairs change shape to fit the

See Exhibits on next page



PHOTOS: MICHAEL MARCOFFE

A popular vendor exhibit among RIMS participants was CCN's "TOPGUN" booth, where attendees could climb aboard an F-22 simulator, above. The Liberty Mutual Group booth, left, featured rides on a simulator into Disneyland's "Tomorrowland," an exhibit now under construction at the theme park, left. K&K Insurance Group, playing up its reputation as an entertainment underwriter, drew attendees to its booth with video games, below.

ADP Integrated Medical Solutions introduced conference goers to the mad scientist "Dr. Julius Hypenstein III" while promoting its software products for the property/casualty industry, above left. Investigative Options Inc. marketed its anti-fraud services to RIMS attendees, above. The booth of Toronto-based Lindsey Morden Claim Services Inc. featured a colorful collage of North American landmarks to emphasize the company's linking together of its Canadian and U.S. operations, left.

Exhibits

Continued from previous page
 smallest person up to the largest person, both in height and width," explained Al Campbell, sales representative for Hillsboro, Ore.-based Reimers Furniture, a first-time exhibitor at this year's RIMS.

The chairs, with prices that start at \$700, can be adapted for the needs of people who have already hurt themselves in the workplace, according to Mr. Campbell, who himself was practicing ergonomics by sitting in one of the Reimers chairs while wearing a headset to take calls on his cellular phone.

Reimers' chairs are "used a lot in back-to-work claims, because our chairs will conform to a really firm lumbar or a soft lumbar, depending on what the ergonomist prescribes," he said. Some of the chairs have arms that convert into computer wrist rests, he added.

"We're here basically to provide some sort of assurance that people can still go to work and feel comfortable," he explained.

In fact, the use of Reimers chairs has helped to reduce workers compensation costs for several major employers, all of whom he said have provided testimonials to help the firm sell more chairs.

The Reimers exhibit also featured adjustable-range tables that can be set from as low as 25 inches to as tall as 37 inches in a matter of seconds with just the turn of a handle. Both the fabric and veneer of the chairs and tables can be customized to match any office decor, Mr. Campbell said.

While ergonomics has caught on only in recent years, Reimers has been in the ergonomic chair-making business for 21 years, according to Mr. Campbell. "We were making good ergonomic chairs before we knew what we were making," he said.

Another first-time RIMS exhibitor distributed free demonstration disks containing a computer screen saver that encourages users to stretch while working. The software, called CyberStretch, was developed by the dance-fitness organization Jazzercise for "busy people working on a computer all day," explained Bill Becker, an ergonomic software consultant based in San Diego.

The software, which can be used as a screen saver or run as a separate program, contains timed stretches emphasizing posture and stretches for 26 parts of the body, such as the neck or the back.

CyberStretch retails for \$70 for a single-use license. Mr. Becker is hoping those who accepted the software for the 30-day trial period will take advantage of the discounted multiuse pricing that the Carlsbad, Calif.-based Jazzercise has offered to RIMS attendees. Those who missed the free trial CD can download a 30-day trial version over the Internet at <http://www.cyberstretch.com>.

Investigative Options Inc., a new company spun off from Chicago-based CNA Insurance Co., used this year's RIMS conference to begin marketing its anti-fraud services on a stand-alone basis.

Most workers comp insurers—particularly those in California, where it's required—offer fraud detection services through their special investigative units.

But Michael Minella, vp and chief operating officer of Investigative Options and an assistant vp of CNA, explained, "We're basically marketing our services outside of CNA" to self-insurers and others who may be interested. The firm was incorporated in July 1997, "because of client demand. We had a number of existing CNA clients who were self-insured, and they asked us to do investigative work

for them," he explained. "In order to do so, we had to become an investigative agency and license ourself in all 50 states."

So far, Investigative Options is licensed in all but 10 states and will have licenses in those states by year-end, according to Mr. Minella. Even though Investigative Options is a separate unit, it uses CNA's staff of 165 investigators to extend its reach across the country, he said.

"It could be a work comp claim we could be investigating on behalf of our client's insureds if they feel they're being victimized, say, in a staged accident. It could be anybody," he said. "We work the health side; we could work property/casualty."

Third-party administrator Lindsey Morton Claim Services Inc., based in Toronto, expanded its booth this year by about one-third to reflect the company's growth in recent years. The

colorful display featured a collage of photographs of famous North American landmarks, including the Golden Gate Bridge and the Statue of Liberty, to illustrate that "we've linked North America together with the U.S. and the Canadian operation," explained Russ Slocum, vp-U.S. operations from Lindsey Morton's Englewood, Colo., office.

Lindsey Morton offered this year's conference attendees a chance to try out its online claims administration system. The system saves time because Lindsey Morton clients with the system at their work sites can obtain loss runs themselves, Mr. Slocum explained.

"We've got a very user-friendly system that's Windows-based. We put systems in our client offices, and they have direct access to their files," he said.

Or, in some cases, client employees



PHOTO: MICHAEL MARCOTTE

"Top Gun" was the theme of Zurich Insurance Group's booth in San Diego at the annual RIMS conference and exhibition.

can go entirely paperless and download the loss run information directly into their own risk management information systems, he added. "That benefits us because we're not printing,

we're not killing trees, and we're not doing all that mailing," he said. "And we think it's a value-added for the customer because they can be online whenever they want to." **BI**

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Full disclosure smoothes claims process

By EDWIN UNSWORTH

SAN DIEGO—A risk manager is better off disclosing too much than too little to an insurer if he or she is to avoid surprises and disappointments after filing claims.

That was the message from speakers at a session during the recent Risk & Insurance Management Society Inc. annual conference in San Diego.

"I'm extremely forthright with our carrier. It beats the alternative of having a claim denied," said Karl Zimmel, risk and insurance manager for Ace Hardware Corp. of Oak Brook, Ill.

He advised risk managers to make sure that all important features of coverage are clearly expressed in

writing and that the company has held back no relevant information from the insurer.

Communication is important, too. Before a loss, ensure that everyone in the company knows that they must forward loss information to the risk manager. After a loss, report to insurers, apprise officers, the company's board, and, if necessary, its shareholders. Give clear written instructions to the field adjuster, and make it clear when you expect any status reports, Mr. Zimmel said.

An important variable that may lead to surprises in any insurance claim is the adjuster. Skills, experience and attitudes of adjusters vary greatly, said Mr. Zimmel, and some like to impress their superiors with

the amount of money they save the company through finding reasons to turn down claims.

Should an adjuster reject a claim, check to see if the specific wording of his or her report accurately reflects the policy, any possible endorsements



and the circumstances. Also check whether the policy wording correctly reflects the underwriting intent and agreements, Mr. Zimmel added.

He warned that a common reason for surprises in claims outcomes is the different interpretations of coverage and of the law applicable to each

specific instance. This can be particularly true in cases of directors and officers liability insurance, because "there are a lot of misconceptions among company directors" about their coverage. "I do a lot of educating of our board members," Mr. Zimmel said.

Richard Schmidt, risk manager for Illinois Tool Works Inc. of Glenview, Ill., said the way a company sets up its risk management programs can make a tremendous difference to the claims response both within the company and from its insurers.

He advised risk managers to think of each insurer as two companies: the underwriting company, where you know the people and everything tends to be positive, and the claims

company, where you may not know the people and many aspects seem negative and possibly adversarial.

As session moderator, Mr. Schmidt initiated discussions by advising risk managers how to reduce the risks of such surprises. He suggested using a dedicated claims unit to reduce the need for continuously re-educating claims offices and to improve coordination. Mr. Schmidt said it is also important to use mutually drafted claims service agreements to establish servicing parameters and to avoid polarization between the insurer and policyholder. He also advised getting to know the top officers of the insurers from the start; they could be useful when there is a problem, he said.

David Shadle, vp-claims consulting for Near North Insurance Brokerage Inc. of Chicago, advised that the risk manager establish a clear understanding of claims handling with all insurers. Claims-handling agreements should specify what authority levels are granted to adjusters and who must be contacted for higher levels of authority; how denials and reservations of rights are handled; the claims-handling chain of authority; the servicing standards required by the risk manager; how servicing is reviewed or audited; and who can be contacted if servicing is unacceptable or problems arise.

Mr. Shadle also emphasized the importance of giving insurers timely notice of any losses and of having a clear definition in the insurance contract of any time frame for making claims. He suggested that policyholders protect themselves from allegations of prejudicing the rights of the insurer by amending the notice-of-loss wording of the contract to "as soon as practical once received by the risk manager."

Risk managers should keep copies of all submissions and proposals, as well as clear notes of meetings where operations and exposures are discussed with underwriters and brokers, Mr. Shadle warned. Should a claim go to court, these documents can be helpful in showing that underwriters were aware of operations and exposures.

He advised risk managers to be wary if an insurer reserves the right to deny coverage in regard to intentional acts, as an intentional act might not necessarily have been one meant to cause harm. The risk manager also needs to find out whether punitive damages are covered, as some states do not allow insurance for them, and to determine the insurer's environmental pollution exclusions.

If the insurer denies a claim or issues a reservation of rights, Mr. Shadle said to be sure, above all, to respond to the denial of the claim, stating in writing the facts applicable to the situation. If you don't, "additional claims could be grouped as one occurrence, and precedence could be established that would be harmful to your corporation's position," he warned.

In the case of a denial, the risk manager must leave no stone unturned in seeking full payment, added Mr. Shadle. If this happens, he or she should meet with the adjuster and the adjuster's supervisor or branch manager; talk with top-level underwriters and claims officers; and seek the broker's intervention, whose rapport with the insurer and "economic buying power" can influence the insurer in favor of the risk manager's company. If all else fails, bring in a powerful law firm with insurance expertise and sue, concluded Mr. Shadle.

Ben Schull, senior vp, national accounts of Near North Insurance Brokerage Inc. of Chicago, was coordinator of the session.



Contingent coverage poses challenges

By **RODD ZOLKOS**

SAN DIEGO—Contingent business interruption coverage could be essential for companies that rely heavily on a limited number of suppliers or purchasers for their products, though settling such claims often is time-consuming and complex.

"Be careful what you're getting into, because it can be like trying to catch a very large fish," said Daniel T. Torpey, manager-insurance claims at Coopers & Lybrand L.L.P. in Dallas and coordinator of a panel on contingent business interruption claims at the recent annual conference of the Risk & Insurance Management Society Inc. in San Diego.

"If you don't control it at the beginning, it can get away from you," Mr. Torpey warned.

"You never think it will take as long as it actually does," said Sandra L. Calvert, manager-insurance at Imation Corp. in Minneapolis and the session moderator.

John Michnya, a vp at J&H Marsh & McLennan Inc. in Los Angeles, noted that contingent business interruption coverage applies to the loss of revenue to a business due to its operations are suspended when its operations are at premises it does not own, operate or control, such as the property of a key supplier or customer.

Any business that would be brought to a halt if an insured peril shut down a key supplier, customer or even a nearby business that attracted customers, or businesses relying on just-in-time inventory control programs or production strategies that increase reliance on key dependent properties, needs contingent business interruption coverage, Mr. Michnya said.

"What we're talking about is if your company relies heavily on product coming in from a supplier...so that if they're down you're really going to have a problem," Mr. Torpey said. "And also customers; if you sell to only one or two key customers, what happens if they go down?"

Contingent business interruption coverage does not cover physical damage or business interruption at your own property; utility service interruption or losses from an off-premises power interruption; civil or military authority interruption; or ingress or egress interruption, Mr. Michnya said.

It also does not apply to downstream business interruption, when a loss at one owned facility causes a loss at another owned facility.

Mr. Michnya noted that among the details of the Insurance Services Office Inc.'s coverage form are requirements that the loss must be caused by a peril named in the policyholder's contingent business interruption policy, not the dependent location's policy, and the loss at the dependent property must cause the policyholder's company to suffer a loss of business income.

Also, the policyholder's company is required to attempt to influence the property it depends on to use alternative machinery, supplies or other locations to minimize the loss.

"That can be difficult sometimes when the guy says he wants to do changes," Mr. Michnya said. "The insurance company is trying to mitigate its loss, and they're looking to you to try to mitigate your loss."

And contingent business interruption coverage applies for the time it takes the dependent company to repair, replace or rebuild the damaged facilities, not time it takes to make alterations or modifications or clean up pollutants. "It does not cover the period of time when the guy wants to up-

grade his plant," Mr. Michnya said.

There can be several obstacles to settling a loss, he said, among them proving there was an actual loss and the extent to which that loss resulted from interruption at the dependent



property, and proving sales losses were not the result of some general downturn in demand for the policyholder's product.

"You have to prove to the company that you had a loss and it is compensable under the policy," Mr. Michnya said. "The burden of proof is on the

insured."

Given those requirements, documenting the claim is important, Mr. Torpey said. "You want to make sure you have some sort of description of what's in there, what's in the claim."

"It's no longer looking at what's happening with your company in this period of time. Now you have to look at the market," he said. "It's going to be more voluminous than a normal business interruption claim."

It's also important to document settlement discussions with adjusters, Ms. Calvert said. Because of the length of time it can take to resolve a contingent business interruption claim, the adjuster who started on the claim might leave or be replaced before it's finally settled.

The policyholder also should work to maintain a good relationship with the insurance company throughout the process, said Mr. Torpey.

The risk manager also needs to get information early and communicate it to the insurer to prevent any surprises later.

"It's really important that you put together some sort of number or presumption to give some sort of magnitude of the loss to the insurance carrier," Mr. Michnya said, even though that estimate is preliminary and later might be adjusted upward by as much as 20% or 30%.

Mr. Michnya suggested that brokers, the company's legal department and other local risk managers all can be resources in sorting out a contin-

gent business interruption situation.

Legal, for example, can check contracts with suppliers, he said. "There could be contracts with your suppliers that specifically state 'This is what we're going to do in the event of a force majeure or some other type of interruption of service.'"

Adjusters who may have worked on similar claims also might be aware of someone else in the marketplace who can supply needed products or materials.

In particularly complex claims situations, outside consultants could prove very beneficial, Ms. Calvert said.

"If you have the mother of all claims, don't try to run it yourself," she said, suggesting risk managers seek consultants' help in those situations. "I think you'll be much happier, and your adjuster will be much happier as well." **B**

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PEOs don't eliminate employer's risks

By JOANNE WOJCIK

SAN DIEGO—Significant business risks remain for companies that lease employees from professional employer organizations, experts warn.

Theoretically, the use of a PEO transfers responsibility for administrative functions such as benefits, payroll, workers compensation and compliance with a myriad of state and federal workplace regulations, according to Bernard E. Kottage, senior vp of risk control consulting for J&H Marsh & McLennan Inc. in Los Angeles.

However, the client employer could be sued outside workers compensation if a leased employee is in-

jured at its worksite, he pointed out.

The client employer also could be held liable for any wages, Social Security taxes and unemployment taxes withheld from the leased employee's pay if the PEO goes bankrupt,

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Mr. Kottage added. Furthermore, the client employer could be liable for unfunded or underfunded pension benefits if the PEO hasn't properly funded the employee's plan.

"Conceptually, the client company should look at risk from the perspective of being a de facto employ-

er and understand their vulnerability and put in place those risk reduction steps that would effectively address that residual liability," Mr. Kottage advised.

He discussed the advantages and pitfalls of employee leasing in a session during the Risk & Insurance Management Society Inc.'s recent annual conference in San Diego.

Employee leasing firms, more commonly called PEOs, usually appeal to small and midsize employers that find it more cost-effective to contract out their human resource functions than to hire in-house staff, explained Christina Harris, senior vp in charge of regulatory affairs and compliance for NovaCare Employee Service Inc., a PEO based in

King of Prussia, Pa.

With an estimated annual growth rate of 30%, PEOs are expected to employ more than 10 million people by the year 2000, she said.

Unlike temporary help firms, PEOs are not labor suppliers in the sense of recruiting, screening and training workers, Ms. Harris pointed out. Rather, a PEO essentially hires all of a company's employees and then leases them back to the employer for a service fee based on payroll costs and other expenses.

When PEOs contract with client employers, "they agree to take on responsibilities for payroll, workers compensation and the provision of all mandatory benefits, including Social Security and Medicare," Ms.

Harris explained. "In addition, they take on responsibility for safety and human resources, and there may be additional benefits that are provided beyond that."

"What we have is a division of employer responsibility," she observed. "Now there are two employers at that worksite working with those employees."

Each party accepts certain responsibilities; the client organization is responsible for the business profit-producing functions, while the PEO is responsible for the manpower. By being able to delegate responsibility for human resource administration to the PEO, "it has freed up time for the business owner to focus on revenue-producing activities," Ms. Harris explained.

At the same time, employees gain access to richer benefits than might otherwise be available, because many employers using PEOs are generally small mom-and-pop operations, she pointed out. "PEOs are able to aggregate all of their small employers together," and they often get better rates on workers compensation and health insurance, Ms. Harris said.

But while employers that lease their employees save money on benefit costs, they may find that using a PEO exposes them to new risks, she acknowledged.

For example, Ms. Harris asked, "where does the liability rest when an employee causes injury to a third party? Is it the PEO's liability or is it the client's liability? And who's general liability policy should respond?"

"That's an important issue that hasn't yet been clarified" by the courts or legislation, according to Ms. Harris.

Another issue to consider is whether the PEO's employment practices liability insurance policy extends to the client employer, she said.

Also, risk managers should make sure there are no other gaps in coverages, she said.

"As a risk manager working for a company that uses PEO services, you want to be very sure you know where coverage begins and where coverage ends," Ms. Harris asserted.

For example, in workers compensation, she said, "In some states, like Florida, the PEO is the master policyholder under which all of its employees at its clients' worksites are covered."

"In the state of New Jersey, it is a 'multiple coordinated policy state' where three policies have to be issued," Ms. Harris explained. "You have a policy issued to the PEO to cover its corporate staff; the client's business has to have a policy to cover the workers at its worksite; and then there needs to be a minimum premium policy to cover the independent subcontractor exposure."

To ensure adequate risk transfer, Mr. Kottage advised risk managers to ascertain "how much control you will be giving up."

In addition, "verify that the insurance provided by the leasing company includes employee bonding, workers compensation, general liability, professional liability, various fiduciary responsibility coverages," he said.

"These legal liabilities can be complex, so it's very important that these are reviewed with the broker and insurance carrier," as well as by legal counsel, Mr. Kottage said. He also advised employers to "verify by use of a CPA that the leasing company has made all of its withholding payments" as required by law.

Jeffrey Rendel, director of risk services for Staff Leasing, a PEO in Bradenton, Fla., moderated the session.

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Confession key to harassment probe

By SALLY ROBERTS

SAN DIEGO—Confession is considered good for one's soul. In a sexual harassment complaint, confession is good for an employer's bottom line, an attorney contends.

"It's always good to have a confession on the record, because when you have complaints of sexual harassment, so much of it is he said/she said," noted Alan Reiner, director-labor employment law for the Fleming Cos. Inc. in Oklahoma City, Okla.

By having a confession on the record, employers have a better chance of dealing with the issue before they are sued, he added.

During a session of the Risk & Insurance Management Society Inc.'s

recent annual conference in San Diego, he discussed ways risk managers should investigate allegations of sexual harassment and how they can extract confessions from harassers.



Mr. Reiner said that, first and foremost, a company's zero-tolerance policy must detail the procedures for reporting incidents of sexual harassment.

He emphasized that a company should appoint one person as the contact to whom employees report sexual harassment grievances.

That person should be a woman,

"because 99% of the time" the victim of sexual harassment is a woman, he said. And, most importantly, that person should be someone employees trust and who has the authority to investigate allegations. The investigator, who is the most important person in the investigation, "needs to be seen as the one who can make things happen," Mr. Reiner said. "If you leave here with nothing else, pick the right person."

Mr. Reiner suggests that the first thing to do when someone comes through the door alleging sexual harassment is to "search for a hidden agenda."

"Everybody that comes through your office is not a victim," he said. Some people will be just disgruntled

employees or people with problems at home. Whatever the case is, "you need to find out why they are there," he said.

He advised attendees to trust their instincts on whether someone is telling the truth or not. "You can make a decision based on the investigation. You'll know if someone is lying to you. Don't get caught up in the legal mumbo jumbo of 'Can we prove it?'"

However, to ascertain whether the alleged victim is lying, Mr. Reiner gave several tips to attendees. Most answers from truth-tellers are direct and spontaneous, he said.

If the investigator accuses the victim of lying and the victim is not, "they start out getting pretty quiet

and they get real loud in the end."

Liars, on the other hand, will give more deceptive responses and say things like, "I'd like to talk to you right now, but I'm busy." Deceptive responses are soft, he said.

Also, liars tend to have "interesting memories," he said. "They either go completely brain dead and can't remember anything or they remember things absolutely to the moment the second hand sweeps past 12."

Another thing liars will do is repeat the questions they are asked, Mr. Reiner said. He added that liars also will typically "swear a lot to God."

Mr. Reiner also emphasized that records must be made of every alleged incident. "Many human resource people don't keep records. If someone comes in and complains, put it on record...always."

After a grievance is made, the investigator must find out about the alleged incident. "Know what you're looking for," Mr. Reiner said.

In addition, Mr. Reiner said the investigator must guarantee the victim she "will close the loop." This means that after an employee comes to complain, the investigator will go back to the person and say, "Look, I've done an investigation, I've checked all of this, I have all these facts, and this is what's going to happen."

"If the loop doesn't get closed, you're going to get stomped," he said. "She'll find someone who will listen to her story. If you're not going to listen to it, there's always an attorney down the street who will listen."

After hearing and documenting the victim's complaint, the investigator should question the suspect. There is certain body language that generally gives away lying suspects, he continued.

For example, guilty suspects will "look for answers on the ceiling," Mr. Reiner said. And many will begin to pick invisible "dust bunnies" off their pants. "Lying takes a lot of work," he said. "They need time to think."

Guilty suspects also tend to make similar objections to questions that don't actually respond to the question being asked, Mr. Reiner said.

For example, if a suspect is confronted and asked if he harassed the victim, a guilty person might respond by saying, "But I'm a married man!" or make religious excuses, he said.

To extract the confession, Mr. Reiner said it is very important to keep talking, apply pressure, and help the suspect through the process toward confession.

"Sometimes you have to make a deal with the devil," Mr. Reiner said. This means taking the stress off the suspect by telling him: "I understand. I might have done the same thing. I know you're not that kind of guy. Maybe you had too much to drink."

Typically, the suspect is worried about losing his job if he confesses. "By telling him, 'The most important thing here is your job. Let's get this thing behind us,' you've said nothing and promised nothing," Mr. Reiner said.

Another good tactic to use is to tell the suspect: "You'll feel better; she'll feel better. She just wants an apology," he said. This method makes the suspect feel as though he is merely giving the woman an apology, when it is actually a confession, he said.

Timing also is crucial in investigating a claim. "The best time to start the case is the day it comes through the door," Mr. Reiner said.

Put some time constraints on the investigation, Mr. Reiner said. The beginning of the process is listening to the employee's complaint, the middle part is the investigation, and the end is achieving closure to the allegations and communicating that to the victim.

Linda Cartwright, manager-health services at Fleming Cos., coordinated and moderated the session. **BI**

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HSB Industrial Risk Insurers

Poor relations with media can spell bad news

By MICHAEL PRINCE

SAN DIEGO—By preparing in advance for dealing with the media, especially in times of crisis, companies can avoid potential public relations disasters.

If handled properly, news coverage after a disaster doesn't mean automatic bad news for a company. Rather, by having a media relations plan and executing it with trained

personnel, a company can effectively manage a crisis.

"The media can be your best friend if you have a well-thought-out media strategy," said Millicent Workman, risk manager for Mueller Industries Inc. in Memphis, Tenn. She said that cultivating a good relationship with the press is important. Not only might this lead to positive stories about your company when it is doing well but it

also can build credibility with the media should a crisis develop.

There is one rule to remember,



she said: "If the media think there is a story... there is a story." As a result, dodging the press or issuing vacuous press releases can cause

more harm than good, she advised.

If you lie to the press, "then you just set a time bomb ticking," Ms. Workman said during a session at the recent Risk & Insurance Management Society Inc. annual conference in San Diego.

Not talking to the press could be just as bad for a company, she warned. "If you won't talk to them, they will talk to someone who will," Ms. Workman said. Often this unof-

ficial company "spokesperson" will relay inaccurate information or give the public a bad impression of the company, she said.

"A company's image can be tainted virtually overnight," she said.

Having a trained staff well-versed in the company's media plan will help reduce communication problems during a crisis, she said. As part of that plan, one person should be designated as spokesperson, and all media calls should be directed to that person.

The spokesperson should repeatedly emphasize the message to be communicated. This will help to ensure that the company's response is consistent when it appears in the various media outlets covering the event.

Sometimes public perception is more important than fact. Even when an mishap such as a fire or other occurrence at a company facility is relatively minor, if the public perceives it as important or hazardous, that perception will predominate.

"How you portray the story... will determine what the public believes happened," she said.

Lawyers generally want to intervene in a crisis and attempt to limit liability by restricting what information gets released to the public, Ms. Workman noted. This can set up a confrontation between the lawyers and those who want to reveal more information. But she warned that this dispute shouldn't be resolved in the midst of a crisis; having the company's stance worked out in advance is vital. "You want to fight this battle before the war," she said.

Finally, Ms. Workman admonished the audience to never say "no comment" in response to media queries. This will just make it seem that the company is hiding something, she said.

John Hughes, director of risk management for Alex Lee Inc. in Hickory, N.C., moderated the session.

Catherine Bennett of Cost Control Concepts Inc. in Goodlettsville, Tenn., was the session coordinator.

Kathryn J. McIntyre, publisher and editorial director of *Business Insurance* in Chicago, also spoke at the session. **BI**

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Advance plan key in disasters: Panel

By MICHAEL BRADFORD

SAN DIEGO—There were plenty of lessons for risk managers the day a ship came shopping in New Orleans.

One of the biggest was that it pays to plan ahead for disasters.

Many of those lessons can be used in planning for any type of catastrophe, according to panelists in a session at the recent Risk & Insurance Management Society Inc.'s annual conference in San Diego. The panelists recalled the damage when the M/V Bright Field lost its ability to steer and slammed into the New Orleans Riverwalk shopping area Dec. 14, 1996 (BI, Dec. 23, 1996).

The "things you need to do to

time for the crowds that arrived in March for Mardi Gras.

An insurer on the panel suggested that underwriters can help a great deal when a disaster plan is being drafted.

"Insurers can be a tremendous source of information as you work your way through the planning process," said Stephen M. Rogers, senior vp with HSE Industrial Risk Insurers in Hartford, Conn.

HSE Industrial Risk Insurers is a joint underwriting association that writes highly protected risk property insurance for Fortune

Continued on next page

1998 BI Risk Management Honor



Business Insurance hosted a luncheon, right, during RIMS' annual conference in San Diego for the three people named to its 1998 Risk Management Honor Roll. BI Editor Paul D. Winston, far left, presents an award to Honor Roll member James E. Green of Fort Worth, Texas-based Justin Industries Inc.



PHOTOS: MICHAEL MARCOTTE

1998 RIMS Report

prepare, the things you need to do to execute, are no different," whether a ship is involved or the disaster is of another form, said Steven W. Sachs, senior vp and manager-risk management services division at brokerage Hobbs Group in Columbia, Md.

Mr. Sachs, who serves as the outsourced risk manager for The Rouse Co., the Columbia-based owner of Riverwalk, used the New Orleans incident as an example of how disaster planning can help restore a damaged area.

Despite the heavy damage to the popular shopping area on the Mississippi River, 90% of Riverwalk businesses were reopened in 40 days.

Assembling a quick-response team ahead of time is essential in disaster planning, Mr. Sachs stressed.

The team in place for The Rouse Co. is made up of Mr. Sachs; directors of maintenance, security and corporate affairs; a construction vp; the human resources vp, if needed; and a group vp with the authority to "tell people what to do," Mr. Sachs remarked.

"That team is really important," he said, because while local managers likely are experiencing a disaster for the first time, the corporate team probably already has faced similar challenges.

The local manager's job generally is to "take care of the people," Mr. Sachs said. That means communicating the extent of the damage and the recovery process to the tenants and, with the help of corporate affairs, releasing the details of the disaster to the public.

"Our job is to get that building back on line after we've dealt with the life-safety issues," he added. Much of that job depends on making contacts with contractors, engineers and suppliers of various goods and services before a disaster strikes.

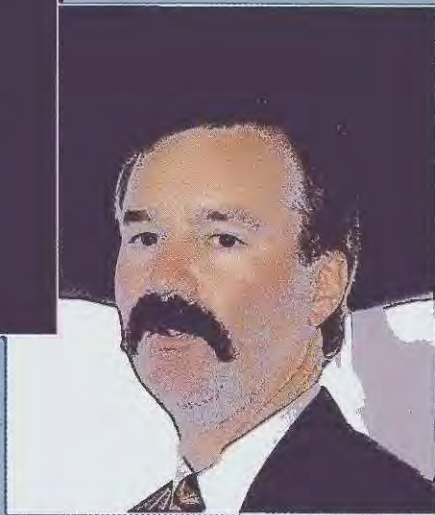
The Riverwalk disaster occurred just before a heavy tourist season in New Orleans, Mr. Sachs recalled. While The Rouse Co. hoped to have the shops open by the time the Sugar Bowl was played at the New Orleans Superdome, it actually had to settle for a slightly later reopening. Still, much of the shopping area was reopened in time to capture tourist dollars attracted by the Super Bowl played in New Orleans in January 1997, and in plenty of



Roll luncheon



Making up the 1998 Risk Management Honor Roll are: Edward J. Molloy of Aetna Inc. (left, above center); James E. Green of Justin Industries Inc. (above left); and Mark L. Hubbard of Loma Linda University Adventist Health Sciences Center Inc. (right, above right).



Continued from previous page
1,000 companies.

Formerly named Industrial Risk Insurers, the association was acquired by Employers Reinsurance Corp. earlier this year, with 0.5% held by Hartford Steam Boiler Inspection & Insurance Co. (BI, Dec. 22, 1997).

"Keep in mind that you are identifying risk, evaluating exposures and then planning your response," Mr. Rogers said.

Insurers have plenty of information to help with that process, he said. "For instance, in my company we inspect every location that we insure above a certain dollar amount, and we collect a tremendous amount of information on each of those risks."

That information can describe the building's construction, tenants, fire prevention techniques and other details that could be used to begin planning a response to a disaster that could strike the facility, Mr. Rogers noted.

In addition, he pointed out, insurers generally are willing to share information they have gathered regarding natural catastrophe exposures throughout the world.

'I strongly recommend that...you preplan for the claim,' says Stephen M. Rogers of HSB Industrial Risk Insurers.

"There's a lot of information that we gather just as a natural, inherent part of our business that maybe is a resource you could tap into as you take a look at your own individual exposures," he told risk managers.

Some insurers also can offer risk managers training that could help control a disaster, Mr. Rogers said. Training is a key component in successfully implementing a plan, he added.

HSB Industrial Risk Insurers offers training, for example, in how to use fire protection equipment, Mr. Rogers said.

Preplanning also can help when the time comes to file claims, he noted. "I strongly recommend that, just like any other component of the disaster recovery plan, you preplan for the claim. Make it a natural part of your overall recovery plan."

He encouraged risk managers to "establish relationships with the people who will be handling the claim" before a loss occurs. "A crisis just is not the time" to be forging good relationships with people who will handle claims, Mr. Rogers suggested. "It may happen, but it's just much better to meet your adjuster ahead of time."

Mr. Sachs of Hobbs Group suggested that risk managers prepare for some surprises when third-party claims begin to come in after a disaster.

From the number of claims that were filed after the Riverwalk incident, it appeared "half of New Orleans was there" when the ship hit, Mr. Sachs said.

And they all wore Rolex watches that, incredibly, "shook off" and vanished when the Bright Field rammed the Riverwalk, he recalled. "We also found it very curious the number of laptops that people were carrying on a Saturday."

Robert F. Sweeney, risk manager with DFS Group Ltd. in San Francisco, was the session moderator.

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- 1990
- 1991



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Continued from page 3

involved in drafting the rule.

Comment *b* of the 15½-page section states that an attorney's client must consent to the conditions under which a third party, such as an insurer, reimburses the client's attorney. Those conditions include how much control the third party has over the direction of the case and any substantial risks those conditions may create for the client.

The next part of the comment states that policyholder clients im-

major change in policyholders' relationships with defense attorneys and insurers.

"Insurance companies for a century have had a right to direct a defense and settle claims," Mr. Syverud told session attendees. While insurers have abused the system at times, "the law has developed remedies for those abuses," he said. "Most of the time, the system has worked."

Mr. Syverud, who supports Section 215, said the restatement would prohibit lawyers from following insurers' directions if that would increase policyholders' liability beyond their insurance limits.

More important, the restatement would continue to bar lawyers from divulging information about policyholders to their insurers, he said.

However, in a co-client relationship, a defense attorney with information the insurer could use to deny coverage to its policyholder may have to withdraw from the case.

"The question is, 'How do you withdraw without flagging to the insurance company why?'" he observed. "It's not easy, and often the judge directs the lawyers to stay on."

Mr. Syverud said he was more troubled by the first draft of the restatement, because it would have required insurers to provide policyholders a "gold-plated lawyer." Such an attorney represents only the policyholder's interests and is not subject to the control of a co-client.

"It might be in the interest of both the policyholder and insurer

Continued on next page



PHOTO: MICHAEL MARCOTTE

This trained cockatoo, along with other exotic birds, entertained visitors at the Protection Mutual Insurance Co. booth in the exhibit hall of the annual Risk & Insurance Management Society Inc. conference and exhibition.

1998 RIMS Report

explicitly give their consent for their insurer-provided attorneys to answer to the policyholders' insurers whenever the policyholders file claims for which "there appears to be no substantial risk" that the insurer will deny coverage.

The ALI is expected to approve the third restatement of the rule May 12, the second day of the group's 75th annual meeting in Washington.

Mr. Anderson cited two reasons that insurers have advocated this change now after they had provided a defense to policyholders under the old rules for nearly a century. "They don't like to pay lawyers, and they don't like to pay claims," he asserted.

"But sometimes it's tough for insurers to get the goods on policyholders (to successfully deny a claim), so they want a little help. The way they want it is to get a pipeline into the policyholders' lawyers' offices," he said.

"This is a rotten, stinking, lousy way for an insurer to treat its policyholders," he said. "Third-party payers don't buy their way into privileged information."

Under the proposed rule, insurers "don't have to worry" about investigating an insurance claim, because a policyholder has to disclose to its defense attorney all of the facts surrounding a claim so the attorney can prepare a defense. At that point, "the lawyer can run to the insurance company and say, 'Here are 17 reasons to deny coverage,'" Mr. Anderson said.

In addition, if the insurer informs the insurer about the policyholder's expectations or intentions of a loss, then the policyholder's defense coverage could be jeopardized, Mr. Anderson said.

"This puts the defense lawyer in a position of being a whistleblower," he observed.

"Would it have come out at some time? Maybe yes, maybe no," he said. "These are questions of degree and timing."

The biggest change the rule will create is in the communication dynamics between policyholders and their defense attorneys, according to Mr. Anderson. "The client should not have to worry about who his lawyer is talking to and what he's telling them."

Mr. Anderson also complained that the insurance industry lobbied the ALI for the rule instead of seeking policy wording changes through the Insurance Services Office Inc. or taking their idea to state insurance regulators for consideration.

Insurers rejected those avenues because they would have put the issue "out in the public," he said.

Messrs. Syverud and Morgan said the rule is not ominous for policyholders and does not portend a

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Continued from previous page and cheaper if the lawyer represented both of their interests," he said.

In such an arrangement, the attorney would pursue only those courses of action that would be beneficial to both the policyholder and the insurer, according to Mr. Syverud.

Session moderator Cheri J. Hawkins, retired assistant treasurer and director of insurance for Weyerhaeuser Co., noted that 23 states have enacted statutes entitling policyholders to independent counsel when a conflict of interest arises after an insurer issues a reservation of rights to contest a policyholder's claim.

Mr. Syverud responded that independent counsels, such as "gold-plated lawyers," are not cost-free for policyholders, because the costs

for both are reflected in insurance premiums.

Mr. Syverud also is troubled by the argument by some attorneys that professional responsibility law precludes them from taking on policyholders and insurers as co-clients.

After the RIMS session, Mr. Syverud also downplayed concerns about the Section 215 language that states policyholders implicitly agree to a co-client relationship with their insurers when filing claims that insurers likely will not challenge.

That language largely is moot because insurers issue reservation of rights against so many claims, he said.

"I would worry about a system which says the insurer always is a co-client," Mr. Syverud said.

Mr. Morgan, who worked on de-



PHOTOS: MICHAEL MARCOTTE

Reporter Terry Marcotte of *Business Insurance's* RIMSTV interviews Philip J. Grewar, left, the 1998 Risk Manager of the Year. Visitors to *BI's* booth, above, in the exhibit hall at the San Diego Convention Center could stop to watch RIMSTV.

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veloping the rule, said in an interview that the rule does not change the relationship among policyholders, their defense attorneys and their insurers.

"It's an accurate reflection of what the law is and has been for some time. We're not trying to change the law," he said.

Both he and Michael Greenwald, a deputy director of the ALI, acknowledged that the group had held many discussions with insurers about the rule. But they also said that the ALI conducted a rule-making process in which the group has been open to comment for several years.

RIMS opposed some earlier drafts of the rule, but it supported the rule's current draft last fall, ac-

'I would worry about a system which says the insurer always is a co-client,' says Kent D. Syverud of Vanderbilt.

cording to Ms. Hawkins.

Mr. Morgan noted that insurers are not entirely pleased with the rule, either. They have expressed disappointment that they would have to obtain policyholder consent in many situations before they would be considered co-clients, he said.

Policyholders will have to fight the rule on a case-by-case basis. Mr. Anderson said. When an insurer asks a judge to compel a policyholder defense attorney to treat the insurer as a co-client, the policyholder attorney has to be "sharp" enough to convince the judge he should not abide by the ALI's recommendations.

The ALI representatives said policyholders still have some time to comment on the rule.

After this week's vote on the restatement, the membership would not vote on it again unless substantial changes are proposed during the final editing process over the next year, Mr. Greenwald said.

But the ALI still will accept comments on the restatement, he said.

"Although it's very late in the game, it's still an open process," Mr. Greenwald said.

James Fournier, director of insurance coverage projects for Anderson, Kill, coordinated the session.

Comments on the rule may be sent to Professor Geoffrey C. Hazard Jr., director of the American Law Institute, 4025 Chestnut St., Philadelphia, Pa. 19104-3099.

Violence threat demands attention: Speakers

By SALLY ROBERTS

SAN DIEGO—Ignoring the potential risk of workplace violence will only make employers more susceptible to such acts, a security expert warns.

Despite more and more violent acts occurring in the workplace today, most employers still do not have proper procedures in place to address workplace issues before they result in violence, said Lou Tyska, director of strategic partnering at Pinkerton Consulting & Investigation Services in Hollis, N.H.

According to a 1998 survey of Fortune 1,000 companies conducted by Pinkerton, workplace violence ranks as the second-highest

security threat after employee theft. In fact, "workplace violence ranked as the No. 1 or No. 2 concern over the last three years," Mr. Tyska said.

But a 1996 survey of 5,000 human resource professionals conducted by the Society for Human Resource Management found that while workplace violence was cited as a major problem, more than 40% of the respondents had no policy in place on how to deal with incidents in the workplace, had no crisis management team in place, and lacked zero-tolerance plans, Mr. Tyska said.

"Yet these were the human resource professionals, and they surveyed their own organizations, and

those were the disappointing results," he said. "It indicates that there is an enormous amount of opportunity for a partnership to exist between the risk management peo-



ple and human resource management people and the security and safety people of all those organizations that don't have that kind of policy in place."

If these statistics are not alarming enough, consider this: Fifteen people are slain on the job every week, and workplace violence is the leading cause of death for women at

work, Mr. Tyska said, citing statistics from the U.S. Department of Justice. One of six assaults happens at work.

What is scary, Mr. Tyska said, is "when you bring this to someone's attention and still no cognitive corrective action is taken." He attributes this reaction to the philosophy of, "It will never happen in our workplace."

Mr. Tyska discussed violence in today's corporate America during a session at the recent Risk & Insurance Management Society Inc. conference in San Diego.

To begin the session, Mr. Tyska defined workplace violence as "internal infliction of physical harm to persons or property of a company

by people with a past or present relationship to the company or one or more of its employees."

The most common motivator behind workplace violence is simply a person's irrational behavior, cited by 26% of those responding to a survey by Northwestern National Life Insurance Co. This was followed by people dissatisfied with service; people upset at being disciplined; and those with interpersonal conflicts.

Mr. Tyska said that while he doesn't always agree with this, the profile often provided of the high-risk employee is this: a white, middle-aged male whose self-esteem is rooted in his job; who has a history of violence and substance abuse; who is fascinated with firearms; and who blames others for his own failings.

Early warning signs that a person might commit workplace violence include substance abuse problems, depression, job stress and paranoia.

After relaying those common characteristics, Mr. Tyska showed a video of a man who videotaped himself preparing to kill his former supervisor and himself; he later that day shot and killed two other employees of his former company and then himself. The video graphically illustrated to attendees the characteristics found in people likely to commit violent acts. For example, the man on the tape blamed his brother for past sexual abuse and his former supervisor for not addressing his special needs.

Mr. Tyska said there also are common denominators found in organizations that have experienced violence in the workplace. Among the common characteristics, those organizations tend to ignore the warning signs of individuals issues; they deny the existence of the identified issues; they only react to events because they have no prevention plans in place; they fire or punish problem employees without dealing with the issues or causes, often referred to as "Band-Aid management"; they have both operational and organizational communications problems across all levels; and their top management participation in or support of violence prevention programs is non-existent.

"Violence will occur when you ignore" or never completely address issues and conflicts in the workplace, Mr. Tyska said.

Additionally, organizations most vulnerable to workplace violence are those where employees do not trust management; where the organization is tiered so that employees are not allowed to make decisions to accomplish goals; where feelings of being controlled and afraid exist; and where employees believe management is vindictive, Mr. Tyska explained.

Mr. Tyska said such "traditional vessels of violence" within the organization include ineffective policies, procedures or regulations; labor agreements; hiring practices and management. All of these have the potential to create confusion, frustration and aggressive behavior.

"Ask yourselves how many times you've experienced any of this yourself," Mr. Tyska told attendees.

Mr. Tyska offered risk managers four keys to preventing workplace violence:

- Treat all people with respect and dignity.
- Recognize troubled or at-risk employees early.
- Recognize troubling situations early.
- Manage serious cases actively.

Judith Lindenmayer, vp-Fidelity insurance and risk management at FMR Corp. in Boston, moderated and coordinated the session. **BI**

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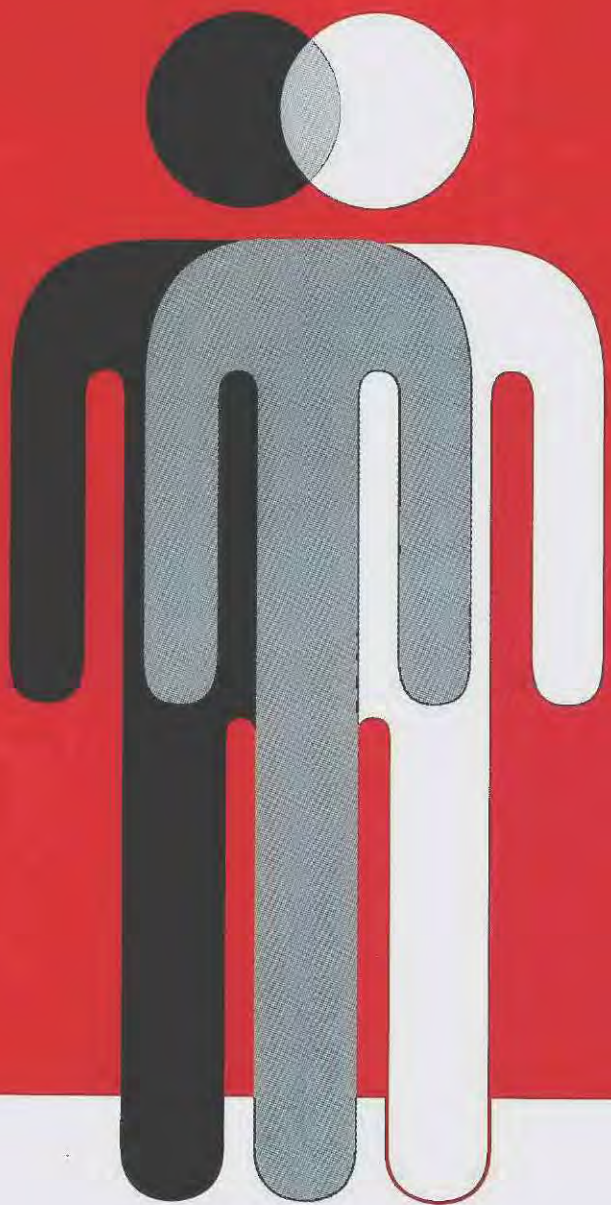
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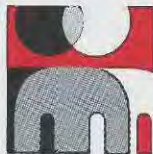
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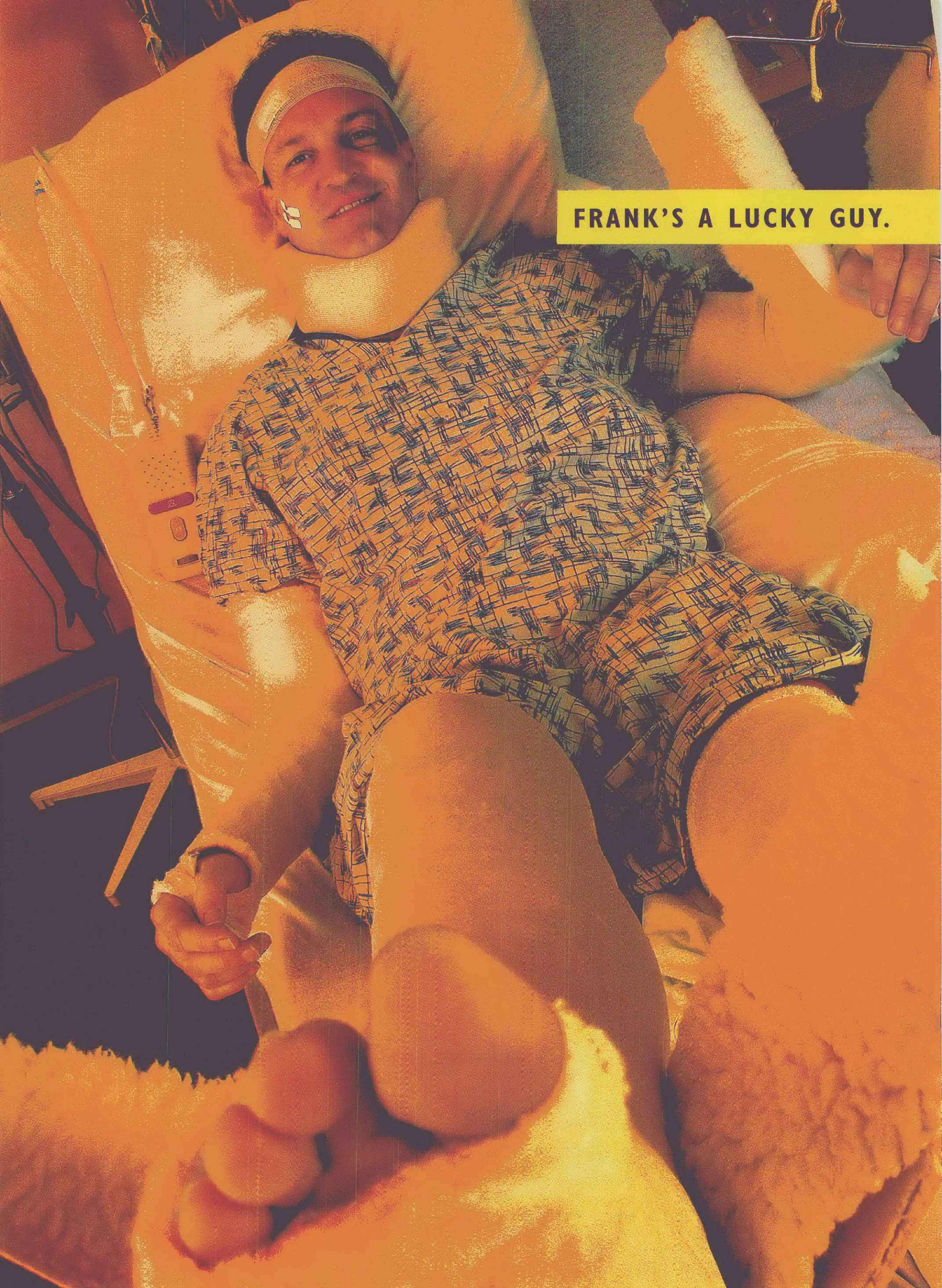
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Qualities

Continued from page 3 works."

The best candidates will have a number of educational qualifications and will be able to "manage a broad portfolio of risks," he added.

Brian M. Kawamoto, director of the alternative risk transfer division at Swiss Re America in New York, emphasized that "we need to broaden our definition of risk" to include many areas that traditionally have not been considered a risk manager's responsibility.

It is becoming more common for risk managers to address regulatory risks, as well as others, that include defaults, interest rates and the volatility of earnings per share.

In reference to another speaker's example of how a risk management

job in the Midwest remains unfilled because the company can't find a person with the right skills to handle a range of exposures, Mr. Kawamoto suggested the company might be wise to look for someone with the broad skills and the interests "of a Renaissance person" rather than "a generalist with certain skills" to fill the post.

If the right risk management person can't be found, or if a company doesn't think it is doing a good job at risk management, maybe the task is better left to someone else, the panelists suggested.

For example, a company not particularly competent at risk management may turn the job over to someone else, Mr. Kawamoto said. Such companies have determined they want to spend more time on what they are good at—their core

businesses, he explained. Outsourcing the job "allows people to free up time to focus on the strategic issues."

Apart from gaining time to concentrate on the core operations, some companies can save money when they eliminate risk management departments in favor of outsourcing, Mr. Kawamoto pointed out.

"Let's say, for discussion's sake, your organization actually elects to bring in a consulting firm to replace the existing risk management department," said R. Alan Lieban Jr., risk manager with Litton Industries Inc. in Woodland Hills, Calif.

Such a move would bring a drop in staff costs because of the reduction in full-time employees, a fresh perspective on the company's risk management needs, the expertise

of a pool of qualified consultants, and the transfer of some errors and omissions exposures to the consulting firm, according to Mr. Lieban.

With those benefits, however, come drawbacks, he warned.

"It may take the consultant a long time to get familiar with your issues," Mr. Lieban said. And expenses could rise if there are any hidden charges or risk management projects and responsibilities turn out to be greater than initially discussed.

Mr. Kawamoto warned of another outsourcing danger: lowered morale because of staff cuts.

Mr. Davis also pointed out that not every risk management function can be turned over to someone else. While administrative services can be outsourced, it is impossible to outsource all the decision-making regarding risk management.

"There needs to be a person in the firm" who will make such decisions as the amount of risk to retain and the basic design of an insurance program, Mr. Davis said.

A type of "hybrid" outsourcing can work well for some companies, according to another panelist.

John F. Riley, director of insurance and risk management at Dun & Bradstreet Corp. in New York, described himself as an "anti-outsourcing militant" before his company split into three companies in 1996.

He then found himself trying to convince management he could handle the risk management operation of all three on a kind of outsourcing arrangement, with the companies that were spun off using Mr. Riley and Dun & Bradstreet personnel to provide risk management services.

Today, Mr. Riley heads up the insurance and risk management department for those three companies and is preparing to handle those chores for three others that are being spun off.

"I have three professionals who work for me," he pointed out. "Each one gets two companies and they are totally in charge of those two companies."

In its outsourcing arrangement, each of those professionals is responsible for buying different coverages that cover exposures of all six companies.

That marketing clout saves the companies about 20% on their premium costs, Mr. Riley believes. "It's a system that works very, very well."

Gary L. Swinhart, director of risk management and benefits at CalMat Co. in Los Angeles, moderated the session. John G. Pinner, assistant treasurer at Mattel Inc. in El Segundo, Calif., coordinated the session. **BI**



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Mexico venture highlights need for compromise

By ROBERTO CENICEROS

SAN DIEGO—When Bell Atlantic Corp. acquired part of a Mexican cellular telephone company, there were times when Mexican executives told Bell Atlantic's risk manager to leave and never return.

She eventually forged a partnership with those executives that has enabled her to establish some of the programs she desires, said Sheila L. Small, Bell Atlantic's executive director of risk management in New York. Bell Atlantic's situation is unique because it purchased only a 42% equity share of a family-controlled Mexican conglomerate that has 400,000 cellular telephone subscribers.

The experience of other risk managers whose companies form alliances in Mexico is likely to vary, depending in part on their business arrangements, Ms. Small said. Regardless of the business structure, however, there are a number of structural, cultural and operational challenges to overcome when venturing into Mexico, Ms. Small and a panel on the Mexican insurance and market said during the Risk & Insurance Management Society Inc.'s recent annual conference in San Diego. There are also differences in insurance programs and laws for the risk manager to consider.

No matter what countries risk managers find themselves operating in, cooperating with local staffs is crucial, said Ms. Small, whose company operates globally. Compromise is essential to ensure that the local staff makes the best decisions to protect a company's assets.

"That is really the key to success in working with international partners," she said. "It's not going to work—and I can tell you I have been there—when you go in and say, 'OK, this is the way the program should run.' It's an evolutionary process."

One difficult hurdle Bell Atlantic faced was the tight relationship between a local Mexican broker and the cellular telephone company's owner. The local broker is the godfather of the owner's son, Ms. Small said. Such business relationships are tough to sever, even if doing so would benefit the corporation's value.

In 1994, just as Bell Atlantic was ready to take its new venture public, the cellular telephone company's owner sent out a memo stating that insurance was not to be bought through any broker other than his longtime friend.

That broker had placed hundreds of stand-alone insurance coverages even for small items, and the company did not have an all-risk program or an audit system to determine if coverage or payments were being duplicated. Such practices are typical in Mexico, as are very low deductibles. Additionally, very few safety and loss prevention programs were in place for the Mexican company.

Ms. Small has not entirely gotten her way in changing brokers or restructuring the entire insurance program. But through much "politicking and persuasion," she was able to place directors and officer's liability coverage for the IPO with a global broker.

D&O coverage was not well known in Mexico in 1994, and Ms. Small said she wanted the policy written in New York. She said that if there were a lawsuit, it likely would be filed in the United

States.

To this day the local Mexican broker places the bulk of the cellular telephone company's business. But the company has benefited from his worry over competition. "He has sharpened his pencil," Ms.



Small said.

Language differences also present difficulties. Brokers will say they are not a problem, because they generally have bilingual staffs, Ms. Small said. But it can be tough going when U.S. risk managers need to work with operations

staffs in foreign countries. Ms. Small studied Spanish for two semesters at a junior college to help her in Mexico, but she said it's still not always easy.

"It's a difficult part of dealing with an international venture," she said.

But Mexican businesspeople are far ahead of their U.S. counterparts in having a second language, and Bell Atlantic immediately provided its Mexican staff with English classes.

Work hours are another cultural difference. Mexican businesspeople are hard-working and dedicated, but they start work later in the day. Long lunches are also nearly a religious tradition, Ms. Small said.

However, they work much later into the evening than is typical in the United States. That leaves only the morning hours for a risk manager in New York to reach the staff in Mexico City.

Risk managers entering Mexico also face a host of loss prevention challenges. For example, Mexican companies often have inadequate fire protection systems and erratic water supplies, said Richard H. Atherton, vp-global business unit for Aon Risk Services in Mexico City.

Retrofitting and building a private water reservoir and water pumping system for an acquired building may be costly but necessary, Mr. Atherton said. Trans-

portation crime, such as truck hijacking, and other crimes, such as kidnapping, also continue to present challenges.

On the positive side, there is a small but growing number of risk managers in Mexico. RIMS is supporting the growth, Mr. Atherton said. There is also growing knowledge about loss prevention practices due to some notable disasters and the entrance into Mexico of foreign highly protected risk insurers.

Earthquakes remain a major exposure in some regions. Purchasing coverage is not mandatory, but purchasers must pay a rate regulators determine; it was reduced on

Continued on next page

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Continued from previous page
 April 1, said Agustin O. Quevedo Corona, vp-international reinsurance and underwriting support in Mexico City for Mexico's largest insurer, Seguros Comercial America S.A. de C.V.

The rates vary depending on factors such as the seismic zone a property is located in and the property's value. Co-insurance and deductibles also are mandatory and depend on the seismic zone. However, risks are exempt from those rules if a company has insured property and business interruption values exceeding \$50 million in several locations or \$30 million in one location. Policyholders can purchase their coverage from international insurers.

The session was coordinated by David S. Walls, account vp in Malvern, Pa., for Arkwright Mutual Insurance Co. **BI**

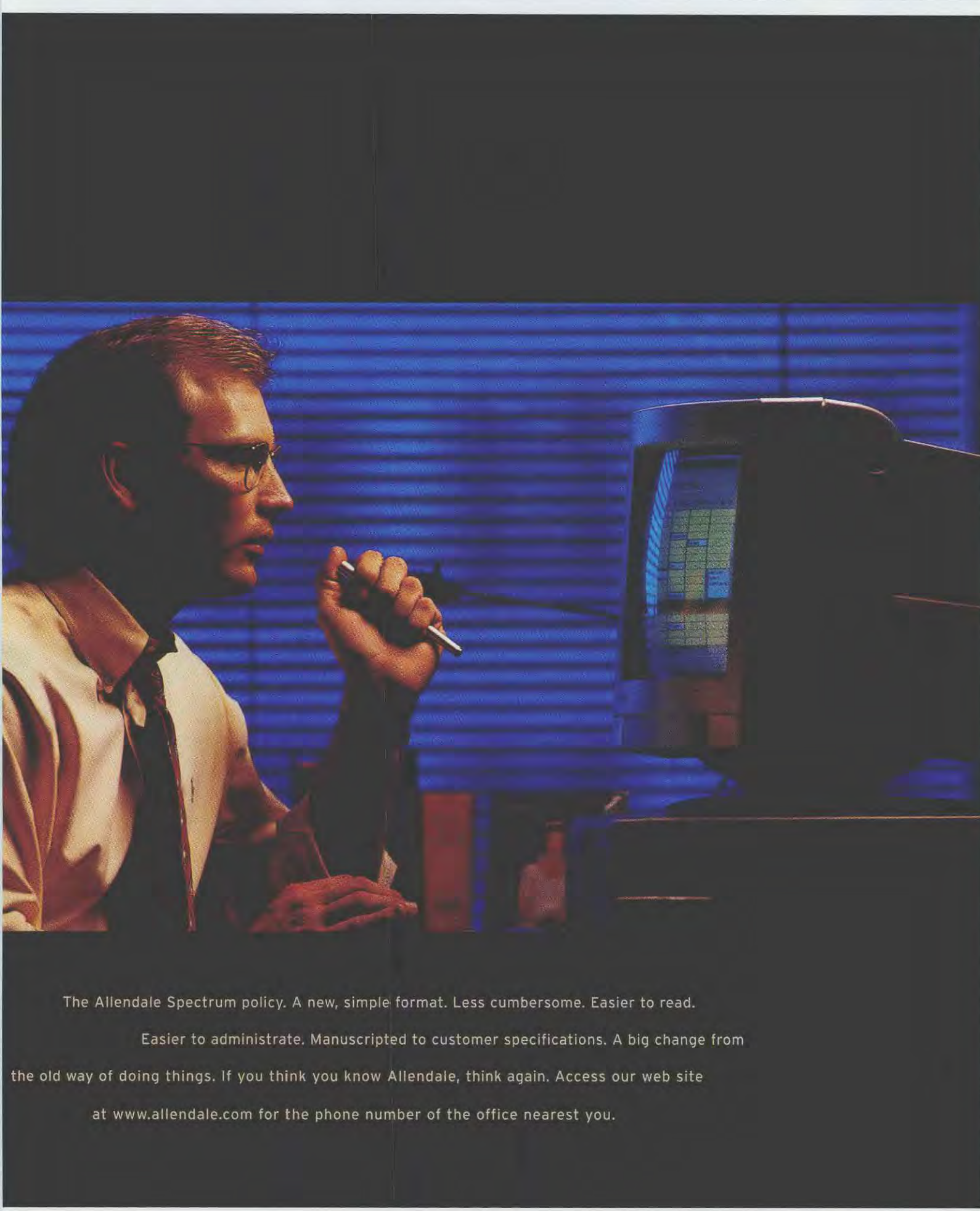


1998 RIMS Report



PHOTOS: MICHAEL MARCOTTE

More than 350 organizations exhibited products and services during the recent RIMS conference and exhibition at the San Diego Convention Center.



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Spencer names scholars

SAN DIEGO—A graduate student at Virginia Commonwealth University is the winner of the first Anita Benedetti Memorial Scholarship awarded by the Spencer Educational Foundation Inc.

Sherry L. Pilz was named winner of the \$10,000 scholarship during a luncheon for chapter presidents and directors of the Risk & Insurance Management Society Inc. at the society's recent annual conference in San Diego.

The scholarship honors Ms. Benedetti, the former deputy executive director of RIMS and president of the Spencer Foundation. She died in 1996.

The Spencer Foundation also awarded three other \$10,000 scholarships as part of the \$115,000 in scholarships that the foundation will award this year to students of insurance and risk management.

Winners of the \$10,000 scholarships were Gwendolyn Ezell of the University of Wisconsin at Madison, Kathleen McCullough of Georgia State University and Tong Yu of the University of South Carolina. All three students are seeking graduate degrees.

Scholarships for \$5,000 were awarded to these undergraduate students: Dawn Skaggs of Illinois State University; Cassidy Starkey, Sunny Cutler and Sandra Lee of Temple University; Amanda Johnson and Hilarie Silvers of Georgia State University; Sammy McKamie-Martinez of the University of North Texas; Daniel Post of Lebanon Valley University; Jamie Theaux of Southwestern Louisiana State University; and Leah Richardson of The College of Insurance.

The Delaware Valley and Western Michigan RIMS chapters were winners of the society's 1998 High School Outreach Program.

The Delaware Valley Chapter received \$3,100 to fund its involvement in Project InVest in Germantown, Pa. The Western Michigan Chapter was awarded \$1,400 to pay for a mock product liability trial at a high school.

Profits from a raffle held to benefit the foundation—one of many Spencer fund-raisers held during the conference (*BI*, April 20)—will not be known until the foundation determines whether any winners return their prizes as a donation. Not including the raffle, fund-raising events during the RIMS conference raised more than \$68,000.

The \$5,000 first prize was awarded to Lynn Evans of Naples, Fla.

The \$2,500 second prize went to the Toledo Chapter of RIMS in Toledo, Ohio.

Third-prize winners, each picking up \$500, are: John Curry of New York; Jody Feldman of Marietta, Ga.; Jackie Hair of San Jose, Calif.; Steve Kerr of Northfield, Ill.; and Alice Roberts of Atlanta.

—By Michael Bradford

Weak controls can make fraud easier: Speaker

By GAVIN SOUTER

SAN DIEGO—Fraud is a fact of business life that all organizations should face, a fraud investigator says.

While there are many reasons people commit fraud and many types of fraud, there are ways to make a defrauder's task harder, risk managers learned during a session at the Risk & Insurance Management Society Inc.'s recent annual conference in San Diego.

By exercising greater control over an organization, managers can set up safety processes to deter and detect fraud, the investigator said. Once fraud is detected, it should be efficiently investigated and dealt with to prevent further losses.

To prevent catastrophic fraud losses, risk managers should ensure their organizations are adequately covered with fidelity insurance to respond to fraud claims, an attorney added.

No organization is safe from fraud, said Debra J. McKibben, director-in-control services at Coopers & Lybrand L.L.P. in Dallas. However, organizations with few controls are most vulnerable, she said.

For example, in one case Ms. McKibben worked on, an employee was responsible for making weekly payroll tax deposits at a bank. The employee drew up a check for \$4,000 to \$5,000, the real amount of tax, and took it to a manager to sign. Then the employee would write a check for four or five times that amount and take it to another manager to sign, and the employee would keep the proceeds, she said.

The employee was able to take advantage of a situation where neither manager knew what the other was doing, and the second manager had no idea how much was supposed to be deposited, Ms. McKibben said.

In other cases, employees in payroll departments create fictitious employees and pocket the extra wages paid, she said.

Under other schemes, employees present false invoices, and when the checks are signed to pay the bills, they simply use typewriters to alter the payees listed on the checks, Ms. McKibben said. "There's just a whole host of things that people are doing to make payments look valid when in fact they are not," she said.

Older employees most often commit fraud, said Ms. McKibben. This perhaps is in part because they have worked so long in the same organizations that they know the weaknesses in the systems, she said.

Several pressures can push people into fraud, Ms. McKibben said. On the personal side, they include indebtedness, serious illness, gambling problems, alcohol problems and perceptions of inequitable treatment.

Higher management also can feel pressured to commit fraud for business reasons, such as competitive pressures, excessive leverage and economic hardship, among other things, she said.

The opportunity to commit fraud often is due to control weaknesses, Ms. McKibben said.

Such weaknesses include having one person handle all portions of important transactions. To combat this, companies should divide responsibilities, she said. "Break that off at strategic points so that there are checks and balances," Ms. McKibben said.

Poor supervision is another invitation to fraud, she said. "If somebody knows that a supervisor is

looking at what they are doing, that's often enough of a deterrent, but if they think they have carte blanche, then carte blanche it's going to be," Ms. McKibben said.

Provisions also should be made so that frauds can be detected inad-



vertently when a defrauder takes a vacation or changes jobs. So vacations should be required as well as job rotations and cross-training, she said.

But even if a fraud is detected, it can be difficult to trace the culprit unless there are clear assignments of responsibility and accountabili-

ty, she said.

When fraud is suspected, management should take steps to investigate the fraud and gather evidence, Ms. McKibben said.

The investigation should include interviews with the suspect and other employees. To prevent tampering, the suspect should not be allowed to access company data during the investigation. Also, the suspect should be watched in case he or she slips out to tamper with evidence at outside institutions such as banks, she said.

Before a fraud is detected, risk managers should ensure they have fidelity insurance to cover losses, advised Allan B. Diamond, an attorney at Hughes & Luce L.L.P. in Houston.

"Whether you are a simple business or a large multinational corporation, losses can be very debilitating if not catastrophic to business, so the question is, how do you insure against that risk? Fidelity bond coverage does that," he said.

Blanket bonds usually provide the widest coverage, but other types of fidelity bonds are available that provide less coverage for less premium, Mr. Diamond said. For example, scheduled bonds come with a schedule of who is covered, and individual bonds cover only specific people, Mr. Diamond said.

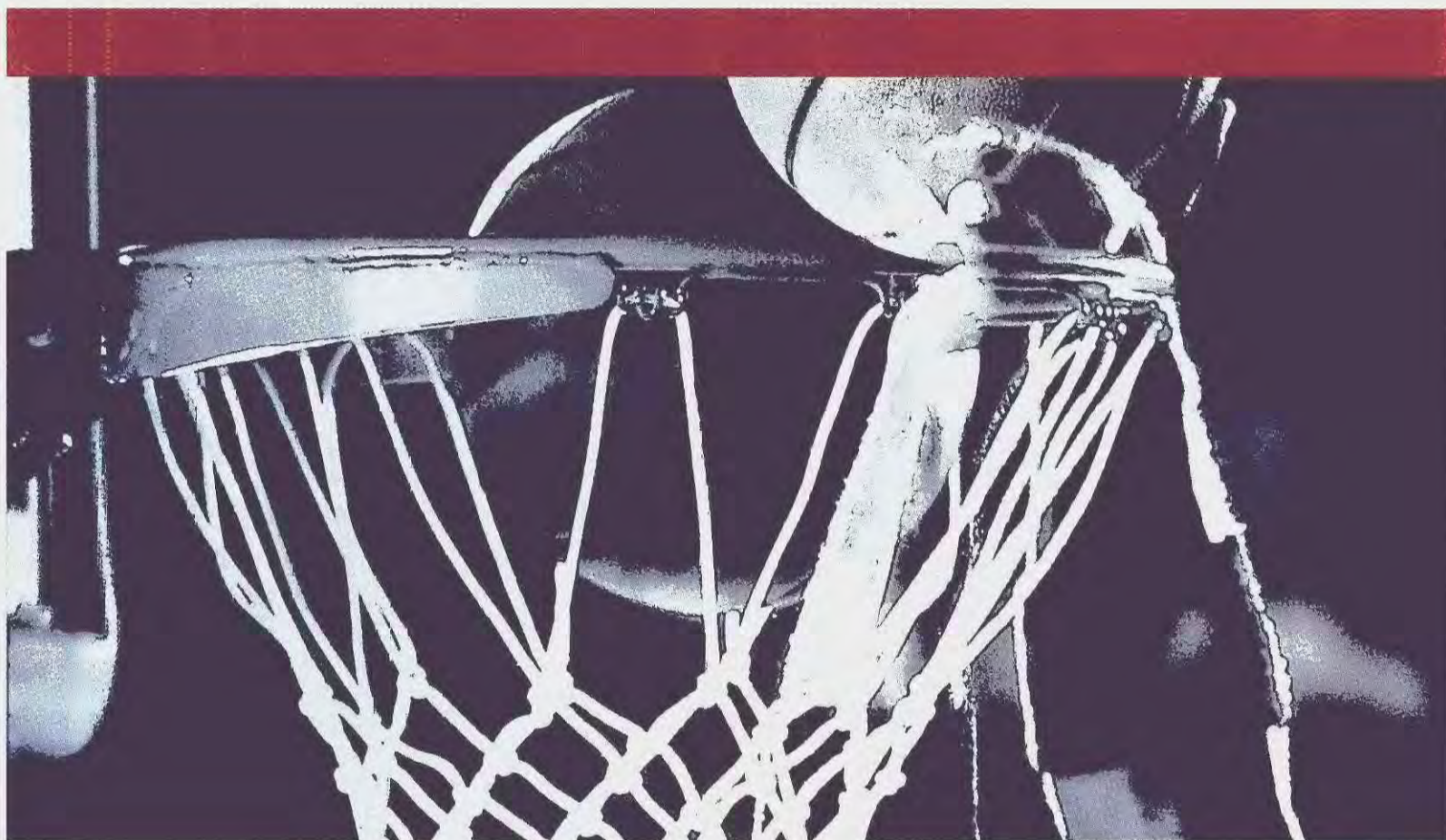
Bonds also can be issued to meet mere suspicion, the insurer has a termination provision in the bond that says that once you have knowledge (of the fraud), the insurance terminates within 30 days with respect to acts of that employee," he said.

But even with the insurance in

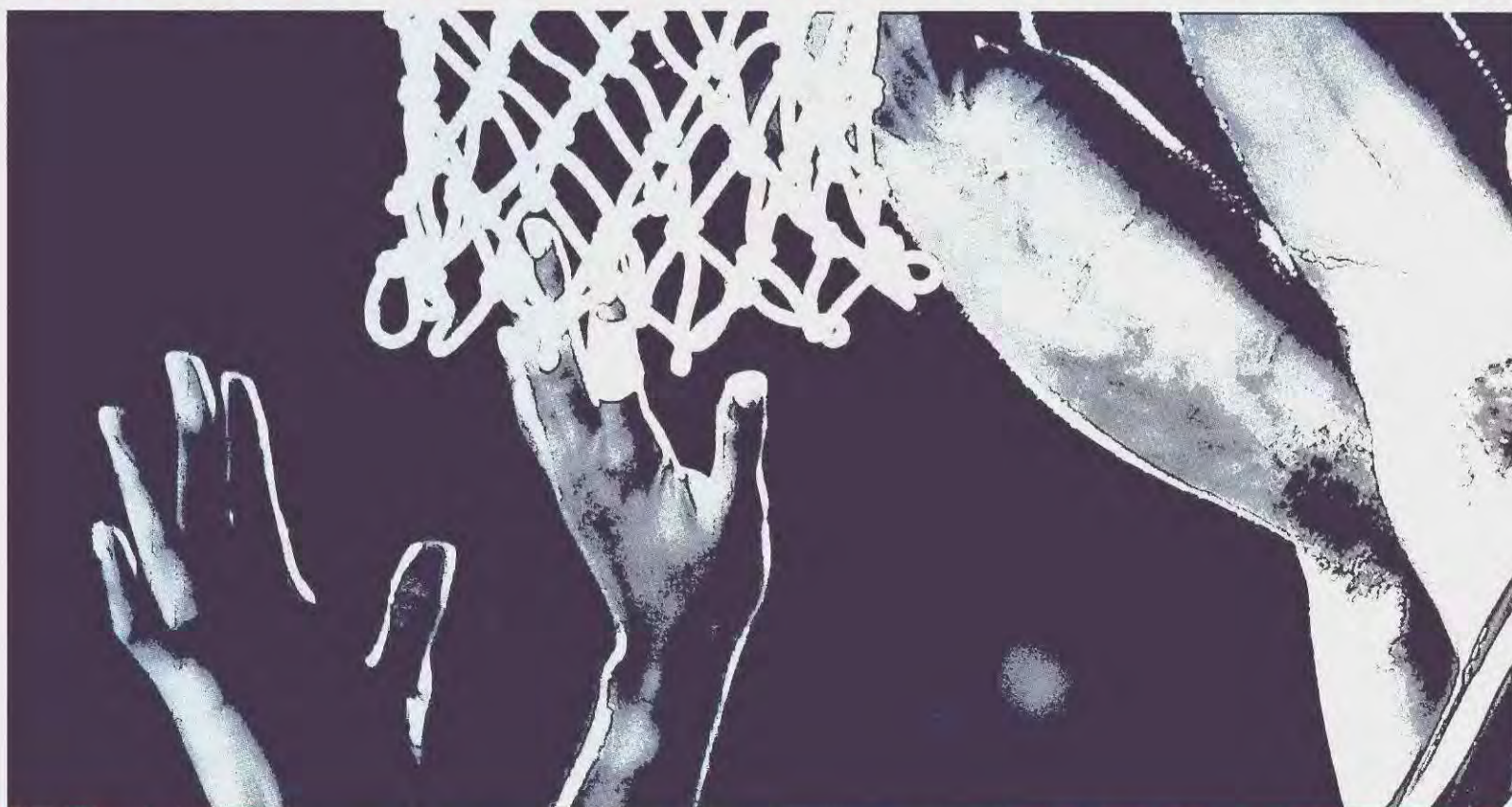
place, risk managers should take care how they handle the investigations and the claims, Mr. Diamond said. For example, to avoid difficulties with claims once a fraud is suspected, risk managers should ensure the fraud is investigated quickly and that the fraudulent activity is stopped.

"If you have knowledge of a fraudulent act that rises beyond mere suspicion, the insurer has a termination provision in the bond that says that once you have knowledge (of the fraud), the insurance terminates within 30 days with respect to acts of that employee," he said.

Robert K. Morse, director of insurance at Olsten Corp. in Melville, N.Y., moderated the session. Robert M. Reeves, senior associate at Coopers & Lybrand in Dallas, coordinated the session. **BI**



CHICAGO'S TEAMWORK IS KNOWN AROUND THE WORLD.



Political risk creates need to choose strategy

By EDWIN UNSWORTH

SAN DIEGO—Political risk insurance is becoming more widely available and on better terms for the commercial buyer.

"There's a lot of capacity out there," said Alan Fine, San Ramone, Calif.-based field vp for Arkwright Mutual Insurance Co. He added that such coverage is being more frequently offered in multiline insurance policies.

However, Mr. Fine also noted that despite coverage becoming more readily available, capacity for political risk coverage still is limited enough that it can sometimes influence rates more than any actuarial assessment of the risk involved.

He said Arkwright doesn't write political risk insurance yet but is considering it. He was unable to say when a decision would be made.

Another speaker, Wayne Wick-



1998 RIMS Report

ham of RiskPRO Consulting, also based in San Ramone, shared the view that political risk insurance capacity is growing. Mr. Wickham said "the capacity is there" for political risk insurance, including coverage on a multiyear basis of between five and seven years.

Defining political risk as "unanticipated government action

and/or cessation of law and order which affects the economic viability of a foreign enterprise or project, or repudiates a contractual agreement between a company and a foreign government," Mr. Fine

'There's a lot of capacity out there,' but it still is limited enough that it can influence rates, says Alan Fine.

said it is a risk that exists everywhere. As a result, it creates vulnerabilities for assets and invest-

ments overseas; for contracts and guarantees; from political violence; and from the disruption of trade.

From time to time, the specific issues of political risk that fit this definition change. Among the leading emerging issues today are government action affecting environmental impacts; human and labor rights; and intellectual property and discriminatory tax policies, Mr. Fine noted.

He said the risk manager has to decide whether to fully hedge his company's political risks through the use of insurance, partially hedge them, actively or passively manage them, or not bother to hedge or monitor them at all. The most common approach he has seen is active management, he said.

Cedric Hughes, corporate risk manager for Hewlett-Packard Co. of Palo Alto, Calif., said the basis of his strategy in this regard is "to manage the political risk, not transfer it."

Hewlett-Packard manufactures its computers and business machines at 60 locations in 16 countries and sells to 120 countries, so it has considerable political risk exposures, he pointed out. He added that given the company's highly leveraged, highly interdependent production and distribution chain involving large numbers of subcontractors in numerous locations, the "domino effect" of business interruption at any one site could be considerable.

Mr. Hughes said Hewlett-Packard's philosophy of managing risk rather than transferring political risk reflects an "aggressive risk identification and mitigation" approach that he regards as proactive.

Hewlett-Packard has three global crisis management teams—its corporate team in the United States and regional teams based in Europe and the Far East. The regional teams operate an early warning system, whereby any incident at a particular subsidiary or site is reported to the regional office and then to the corporate crisis management team.

Mr. Hughes said Hewlett-Packard's risk mitigation strategies include recognition of and focus on real exposures, strategic planning centered on making the risks obvious, and business continuity/business recovery plans.

Mr. Wickham of RiskPro Consulting similarly recommended that risk managers adopt a multidisciplinary team approach within their companies.

He also recommended an "enterprise" risk management process for dealing with political risks. It should include:

- Identifying risks—recognizing the assets invested; the company's country diversification; possible political violence; the possible disruption of trade; and the use of contractors and subcontractors.

- Assessing and measuring those risks—gauging country exposures, including local investment and potential volatility; enterprise/project issues, such as business interruption; facility interdependency; currency and banking; and trade disruption.

- Mitigating and planning—evaluating countries; business recovery plans; and traditional risk control, including facility protection, environmental and human rights issues; and embedded technology.

- Funding—including retention capabilities; insurance mechanisms; government entities; and alternative risk treatments. A risk manager should also analyze the "risk appetite" of the company to determine how much risk it is prepared to carry. When buying insurance coverage, a realistic approach should include consideration of the capacity available, the terms of the coverage, its pricing, the replenishment of limits, and whether to insure through private insurers or government bodies.

- Claims management—understanding before buying political risk coverage how a claim is defined in the policy; how to make a claim; who will be negotiating on the company's behalf; who communicates with corporate management and how; and details of the waiting periods.

Ward Ching, principal at Tillinghast-Towers Perrin in San Francisco, moderated the session. **BI**

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Using intellectual property intelligently, properly

By JOANNE WOJCIK

SAN DIEGO—The rapid growth of the Internet and World Wide Web is exposing companies to more and greater risks, especially in connection with the use of so-called intellectual property.

"There are clearly new potential exposures for liability because of the ease of accessing information, the ease of copying, the ease of dissemination," observed Kathryn Fritz, an intellectual property lawyer with Fenwick & West L.L.P. in Palo Alto, Calif. "It certainly has changed the game for all of us."

Unfortunately, many of these new exposures—most of which arise from the business of "publishing" on the

World Wide Web—are not covered under the traditional commercial general liability policy, pointed out Jean Younger, assistant vp for communications liability products at Employers Reinsurance Corp. in Overland Park, Kan.

For example, the advertising injury endorsements to the CGL policies cover U.S. and Canadian risks but offer no worldwide coverage, she pointed out.

"What's the World Wide Web? Worldwide," she said. "If you get sued in England, forget it."

Policies covering photocopying, software duplication and the Internet "are very important to have. Make sure your employees know what they're supposed to do and what

they're not supposed to do on the Internet," Ms. Fritz warned.

For example, electronic mail intended for internal company use only could be disseminated over the Internet, where any number of eyes can



see it. That could happen if an employee who wants to forward part of a message sends the entire message—including internal-only material—through the Internet.

"It's very important to have policies" so that employees don't inadvertently expose their companies to liability.

Web links that connect a company's site to other Internet sites also may generate infringement concerns, according to Ms. Fritz.

"Links also create new and different kinds of trademark issues," she said. "What is the link? Where is the link going? Is my link making it seem as though I'm affiliated with somebody else? Am I using somebody's logo? Am I using somebody's name?" she queried.

"If your company has its own Web page, this is all stuff that needs to be considered and monitored, and you need to pay attention to it so that you're not liable, through the content of your Web page, for trademark infringement," she warned.

Ms. Fritz also pointed out that

companies that are operating Web pages have entered a new line of business—publishing.

"You should take the same care with anything that appears on your Web page as you would with anything else that you publish," she said, "because you could be liable for anything that's up there."

Some exposures go beyond the intellectual property arena to include securities violations and false advertising, she said.

Employees also put their employers at risk if they copy software for use on more than one personal computer without obtaining permission from the programmer, pointed out Ms. Fritz.

"Guess who's liable for that infringement?" she queried risk managers and others attending a session at the Risk & Insurance Management Society Inc.'s recent conference in San Diego. "The company is," she answered.

"And it's a strict liability cause of action," which means an employer cannot use as a defense the fact that it didn't know its employees were copying the software, Ms. Fritz explained.

To reduce their exposure to this risk, Ms. Fritz advised employers to institute definitive policies prohibiting software copying, with the threat of suspension and/or firing for employees who disregard them.

Two organizations—the Software Publishers Assn. and the Business Software Alliance—can help employers develop such policies and software auditing programs if copying is suspected, she said.

"If you're using something that somebody else created, make sure you have sufficient rights to do whatever it is that you want to do with that work," she advised.

"And educate your employees to be sensitive to others' copyrights," she added. Companies faced with litigation over intellectual property disputes may find they have no or limited insurance coverage, Ms. Fritz pointed out. For example, injunctions—which can be costly—are usually not covered.

"Injunctions with respect to intellectual property are really the things that can be a nightmare," she said. "Let's say I'm a software developer. I have a product, and I name it something. I have made all of my boxes. I've distributed my product out to the channels. I have ads that are already running. I've been doing preproduct advertising. I have lots of promotional brochures.

"Somebody sues me for trademark infringement. They go in, and they try to get a preliminary injunction against me. The preliminary injunction is issued. What does it say? Pull back everything from the channel and quit using the name.

"What do I do? I get embarrassed with my distributors because I have to tell them they have to send all of this stuff back. It's clearly going to cost me a lot of money. I'm probably going to not only forfeit advertising space but I'm probably going to have to pay for it. I'm going to have to destroy lots of material, and I'm probably going to be out of the market for however long it takes for me to get a new product with a new name back on the market," she said, describing the scenario.

Unfortunately, most insurance policies don't consider the cost of injunctions as damages, Ms. Fritz pointed out.

"That's not damage" under an insurance policy, she said, referring to the cost of complying with an injunction. "In most instances, it's very difficult to prove damages in some intellectual property cases."

Sue Boucke, insurance administrator for Lucasfilm Ltd. in San Rafael, Calif., moderated the session. **BI**

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Telecommuting brings ergonomics risks

By EDWIN UNSWORTH

SAN DIEGO—The growth of telecommuting is presenting companies with various insurance challenges, as expected, but the emerging claims are not necessarily those employers had anticipated.

While run of the mill workers compensation claims had been employers' main concern about employing telecommuters, ergonomics-related ailments have emerged as the key problem, two speakers said at a session during the Risk & Insurance Management Society Inc.'s recent annual conference in San Diego.

John Roskopf, vp-financial relations for Aon Corp. in Chicago, said the anticipated rush of workers com-

pensation claims from telecommuters "simply has not happened yet." This risk is unlikely to be a problem from the insurance perspective, as telecommuting employees



would most likely be covered under the employer's insurance or the employee's homeowners policy, provided the worker declares to the insurer that he or she is working from home.

However, Mr. Roskopf added, "What we are seeing is mostly... a small, steady stream of ergonomic claims." The main types of claims concern neck problems, carpal tun-

nel syndrome and backaches, he said.

He attributed this, in part, to telecommuting employees developing bad work habits, such as not taking breaks or not putting in enough time and then rushing to complete work.

Joanell Powers, president of American Pie Corp., a family-owned pizza business in Crystal Lake, Ill., and a former corporate safety officer for Kemper Insurance Cos., warned risk managers to give ergonomics for telecommuters full consideration. "If you're going to see losses in the future, I think that's where they're going to come from," she warned.

Telecommuting can have an impact on a company's losses and insurance claims, but the impact is still

"pretty much untested at this stage," added Ms. Powers.

Both speakers said employers can take important steps to optimize the working conditions of telecommuters and minimize the risk of claims.

Ms. Powers advised employers to devise both clearly defined telecommuting guidelines and policy statements. These should cover definitions of job criteria, work vs. personal time, home circumstances, claims-handling procedures and safety requirements.

She cited Kemper's guidelines as an example. The insurer has a telecommuting policy statement that says, in part, "The company's goal is to help employees incorporate recognized safety and ergonomics stan-

dards/practices into the arrangement of their home workstations in order to achieve physical comfort and efficiency."

Kemper also has a home workstation safety checklist covering work area safety, furniture, equipment protections and general agreements on safety between Kemper and the employee. Ergonomic considerations on the checklist include specifications for equipment, furniture, accessories and lighting. Such checklists should be specific, as in the case of a telecommuter's office chair, with specifications that it be upholstered and adjustable, can swivel, and has five casters for stability.

Mr. Roskopf similarly recommended that telecommuters have an employment agreement outlining specifically their terms and conditions of work. The agreement should clearly set out who is responsible for ownership and usage of property and for insurance.

Mr. Roskopf pointed out that homeowners insurance policies will usually cover both the property of the business and personal injury—provided the telecommuter has disclosed to his or her insurer that he or she is working from home and gives a list of the work-related equipment to be added to the policy.

He said one way employers can reduce ergonomics-related claims from telecommuters with poor work habits is to install a system for monitoring when computer equipment is being used, such as when the worker is on the company's computer network. He said Aon's employer clients have so far experienced no employee challenges to this practice.

Another insurance-related problem he noted is that telecommuting employees are prone to waiting too long before filing claims of any kind. The employment agreement should make clear what employees must do about filing any claims.

Sawyer Stern, risk manager for agricultural research and production for DeKalb, Ill.-based DE-KALB Genetics Corp., telecommutes from Santa Claus, Ind. Ms. Stern said all the risks concerning telecommuting employees "can be identified, managed and controlled just like any other risks."

Ms. Stern said identifying risks includes knowing whether the job in question is suitable for a telecommuter, whether the particular candidate is suitable for the job, and whether there is an appropriate supervisor to oversee the work.

Emphasizing that "telecommuting and apprenticeship do not make good bedfellows," she said candidates must be screened for the necessary characteristics. These include motivation, trustworthiness, flexibility, discipline, organization and knowledge. The knowledge a potential telecommuter must have can't be solely of the subject of his or her position, but of communication and technology skills as well. Also, a telecommuter needs to have a suitable space in his or her home for a "virtual" office.

If these criteria can be met, the benefits to an employer of telecommuting can be considerable. Cost savings per year can average between \$6,000 and \$12,000 per telecommuter, and productivity gains of between 10% and 40% can be achieved from telecommuters, Ms. Stern said.

She said estimates of the number of telecommuters in the United States vary widely, but they are thought to number about 13 million, compared with 2 million a decade ago. That number is expected to reach about 25 million by the year 2000, she said.

Ms. Stern moderated the session. Ms. Powers was coordinator. **B**



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Environmental liability market seeing clear skies

By EDWIN UNSWORTH

SAN DIEGO—Since its virtual collapse in the mid-1980s, the insurance market for environmental impairment liability insurance has made a U-turn in the last five years.

Coverage is now readily available at rates that are falling by about 10% to 20% a year.

Ana Maria Zalles Moore, senior vp in New York of environmental global brokering for J&H Marsh & McLennan Inc., said the market for this type of coverage has so much changed in the buyer's favor and the scope of policies has so increased that "virtually every type of environmental exposure can be insured."

The return of insurers to the envi-

ronmental liability market during the 1990s, including the entry of Kemper Environmental last year, means that "today this marketplace offers a lot of value," she said.

Speaking at this year's Risk & Insurance Management Society Inc. conference in San Diego, Ms. Moore said the "big four" environmental insurers—American International

Group Inc., Kemper Environmental, Environmental Compliance Services Inc. and Zurich-American Speciali-

seen as taking its environmental responsibilities seriously.

At a minimum, it should strive to achieve regulatory compliance. Beyond that, however, it should aim to meet the company's social responsibilities, improve public relations, promote a positive corporate image, promote better employee relations, and improve safety.

Ms. Miller noted that the details of each company's statement would be affected by its type of business.

However, the effectiveness of any corporate environmental risk policy depends on the team behind it, noted Ms. Miller. "It requires way too much expertise from a variety of angles to take it on exclusively" by any one person or department, she said.

While in some organizations the legal and environmental units deal with these matters, it is an area where the risk manager should make a contribution, too, she said. Therefore, the environmental risk management should involve experts from all these departments. However, the team also needs to include the company's insurers and brokers, top management, safety experts, the finance department, the communications and public relations departments, and facilities management and engineering experts.

Katherine Bridwell, SAFECO's environmental program administrator moderated the session. **BI**



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Executing a policy "has also been simplified tremendously," she said.

Another speaker at the session, J. Tucker Miller, assistant director-corporate environmental risk policy at Seattle-based insurance group SAFECO Corp., claimed the key to devising an effective program to manage corporate environmental risks is to adopt a company-specific "environmental risk statement" and to ensure its application involves a team approach.

Ms. Miller said the environmental risk statement should be visionary in scope and broadly defined to enable it to stand up for the next 20 to 25 years no matter what the regulations are.

Additionally, it should provide "meaningful" guidance of business decisions and measures of quality; promote environmental awareness and responsibility throughout the company; and communicate its message not just to shareholders and employees but to shareholders and customers, so that the company can be

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Risk securitization gaining exposure

By RODD ZOLKOS

SAN DIEGO—As efforts to transfer risk to the capital markets become increasingly common, even some of the most ardent skeptics are beginning to concede that risk securitization is a wave of the future.

Count among the grudgingly converted Gary Langsdale, corporate risk manager for International Paper Co. in Memphis, Tenn. His view was changed during a session he moderated at the recent Risk & Insurance Management Society Inc. annual conference in San Diego.

"I have to tell you; my background, my bias, my instincts tell me this is all



baloney," Mr. Langsdale said during introductory remarks.

But by session's end, Mr. Langsdale conceded he wasn't going to write "baloney" on his evaluation form. "While still a bit of a skeptic, I think it's something that's coming," he said.

"Securitization has become an increasingly popular way to transfer risk from the insurance companies to the capital markets," said Dena K-Karras of the Castlebridge Partners L.L.C. insurance and financial risk management firm in Chicago.

So far, there have been about 10 risk securitization transactions totaling about \$1.2 billion and ranging in size from \$30 million to more than \$400 million, and several more are "in the pipeline," Ms. K-Karras said.

"To date, most of the risks that have been transferred have been of a catastrophe nature," Ms. K-Karras said. But she suggested that as investors become more comfortable evaluating different sorts of risks, other types of exposures will be transferred into the capital markets as well.

Michael R. Levin, a senior manager at Arthur Andersen in Chicago who coordinated the session, noted that, historically, insurers have looked to reinsurers and reinsurance brokers as the counterparties and intermediaries, respectively, in transferring their risk.

But banks, institutional investors and players in the securities markets all have certain core competencies they might be able to use to accomplish that same end, he suggested.

"One way to look at what's happening is not that institutional investors and investment banks are competing with the reinsurance market for these exposures; it's that institutional investors and investment banks are competing to apply their core competencies to this exposure," he said.

And there are signs that on both sides of the transactions done so far, developing expertise in the new risk financing is a key consideration, the panelists suggested.

Ms. K-Karras said that in the \$477 million deal United Services Automobile Assn. sold last year for high-level East Coast hurricane coverage, USAA paid "an amazing rate of return. This is probably a more expensive transaction than traditional insurance, but I think the reason USAA did this was to establish a trend."

And Mr. Levin said he has been told by some at Merrill Lynch & Co., one of the deal's lead underwriters, that USAA's real purpose "was to develop a base of investors" so that if the reinsurance market did harden, it would be able to tap that base for coverage and have the expertise to do so.

Meanwhile, from the investment bank's perspective, Mr. Levin said, "What I'm guessing is Merrill Lynch is getting some practice" with the USAA deal that might later be applied to securitizing the risk of large corporate banking clients with sizable property exposures. **BI**

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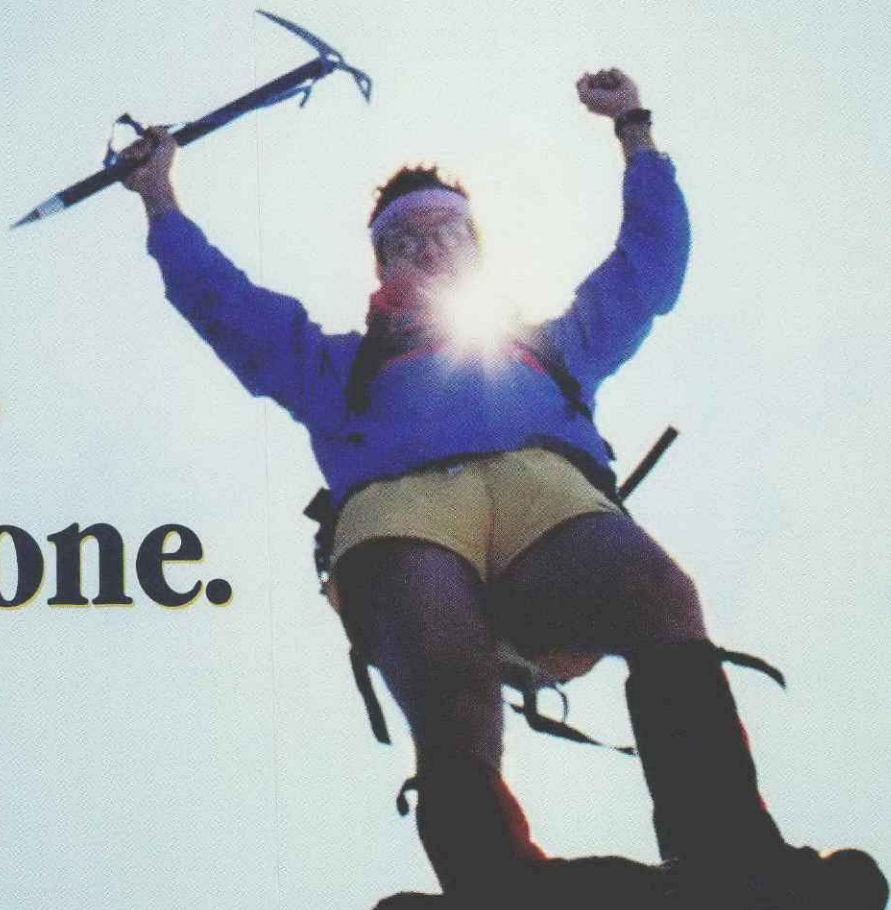
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Integrated risk financing not for everyone

By **RODD ZOLKOS**

SAN DIEGO—Integrated risk financing programs can offer insurance buyers definite advantages but are practical only if they fit properly with an organization's plans and exposures.

"If you're strictly doing it to save money, then I'm not sure any of these programs is the way to go," said Vincent F. Coffey, director-risk management at Sara Lee Corp. in Chicago, who moderated a panel on integrated risk financing programs at the annual conference of the Risk & Insurance Management Society Inc. last month in San Diego.

"The fact is, pricing won't do it, and there has to be other reasons," agreed

Patricia T. Jodry, a vp with CIGNA Risk Solutions in New York who participated on the panel.

Ms. Jodry said all the customers she has seen enter multiyear, multiline programs have had a strong idea about what they wanted to do with their insurance programs over the next three to five years.

For an integrated risk program to succeed, the buyer needs a focused risk management strategy, management commitment, constant internal communications and well-matched business partners, she said.

According to Ms. Jodry, the integrated program, which includes several types of coverage under a single set of aggregate limits and sublimits over a multiyear term, can offer sever-

al advantages.

Among them are reducing or stabilizing an organization's overall cost of risk, maximizing catastrophe capaci-



ty, developing market relationships, enhancing coverage terms, stabilizing a program and reducing administrative work.

But Carol L. Murphy, a managing director with Aon Group Inc. in Chicago, noted there also are potential downsides, including the need to break current insurer or third-party administrator relationships, which Ms. Murphy noted is "a critical con-

cern to many risk managers."

Other disadvantages include the fact that the policyholder is putting "all the eggs in one basket," said Ms. Murphy, who coordinated the panel.

"There's also less coverage in terms of the limits there" than in the traditional approach of buying the lines of coverage separately, she said.

In explaining why Sara Lee examined the integrated risk program option, Mr. Coffey said, "Our primary objective was to reduce our total cost of risk." The company also wanted to partner with fewer stable global markets, sought to maintain primary insurer/claims-handling relationships and hoped to streamline administration of its insurance program, he said.

"The annual renewals of monoline

insurance policies chew up large amounts of time," Mr. Coffey said, adding that such time could be used on loss control.

Ultimately though, after examining the integrated risk option, the company determined that anticipated changes in its structure made it undesirable to lock Sara Lee into a multiline program for a multiyear term, Mr. Coffey said.

For companies that do decide to go with an integrated risk financing program, however, a key consideration is which risks to place in the program Ms. Jodry said.

Companies' risk management programs vary and have different goals and needs, she said. "You really have to look at your risks and look at your experience over the past five or 10 years to determine which types of cover you might want to include," she said.

Then a company must enter into a dialogue with the market directly or through brokers "and decide what would make sense," she said, noting that the integrated risk programs really are partnerships between policyholder and insurer.

Choosing appropriate limits also is a key consideration, "because typically these limits are structured as aggregate limits and they are over a multiyear term," Ms. Murphy noted.

In selecting the insurer partner, important considerations include financial strength; experience and skill with such programs; minimal sublimits and exclusions; policy form design and triggers, reinstatement limits and meaningful net capacity.

"We think meaningful net capacity is one of the important considerations in choosing a market," Ms. Murphy said.

The company's own risk appetite also must be weighed before entering such a program. "With all the modeling in the world" you still can't overcome the risk appetite of management, she said. "So that's something that needs to be considered very carefully."

In addition to various property and liability coverages, integrated risk financing programs can provide an opportunity to address other sorts of exposures, including risks such as weather, commodity prices; and foreign currency price changes.

For example, commodity hedges can be embedded in the integrated program using an adjustable deductible, Ms. Jodry said. If the commodity price reaches a predetermined strike price, the deductible is automatically reduced, she said. "It saves you from having two hits on your balance sheet at the same time."

"I'll tell you right now there haven't been a lot done of this type," Ms. Jodry said. "But basically what you're starting to see today are various ways of insuring the commodity area."

Double-trigger coverages are another possibility. "The trigger will come into play if certain things happen," Ms. Jodry said, using the example of a recreational vehicle manufacturer whose business is sensitive to changes in gasoline prices.

The integrated program could be structured in such a way that if gasoline prices reached a predetermined level, the company's retention on the risk, the financing program could be reduced by a specified amount.

Ms. Jodry said she has also seen several different ways to put in the integrated program environmental coverage that otherwise couldn't be obtained. But she said she really hasn't seen anything in any integrated programs with limits exceeding those already available in the market on a singular basis.

Ms. Jodry conceded that, "Generally speaking, it's whatever the carriers you're working with today are writing."



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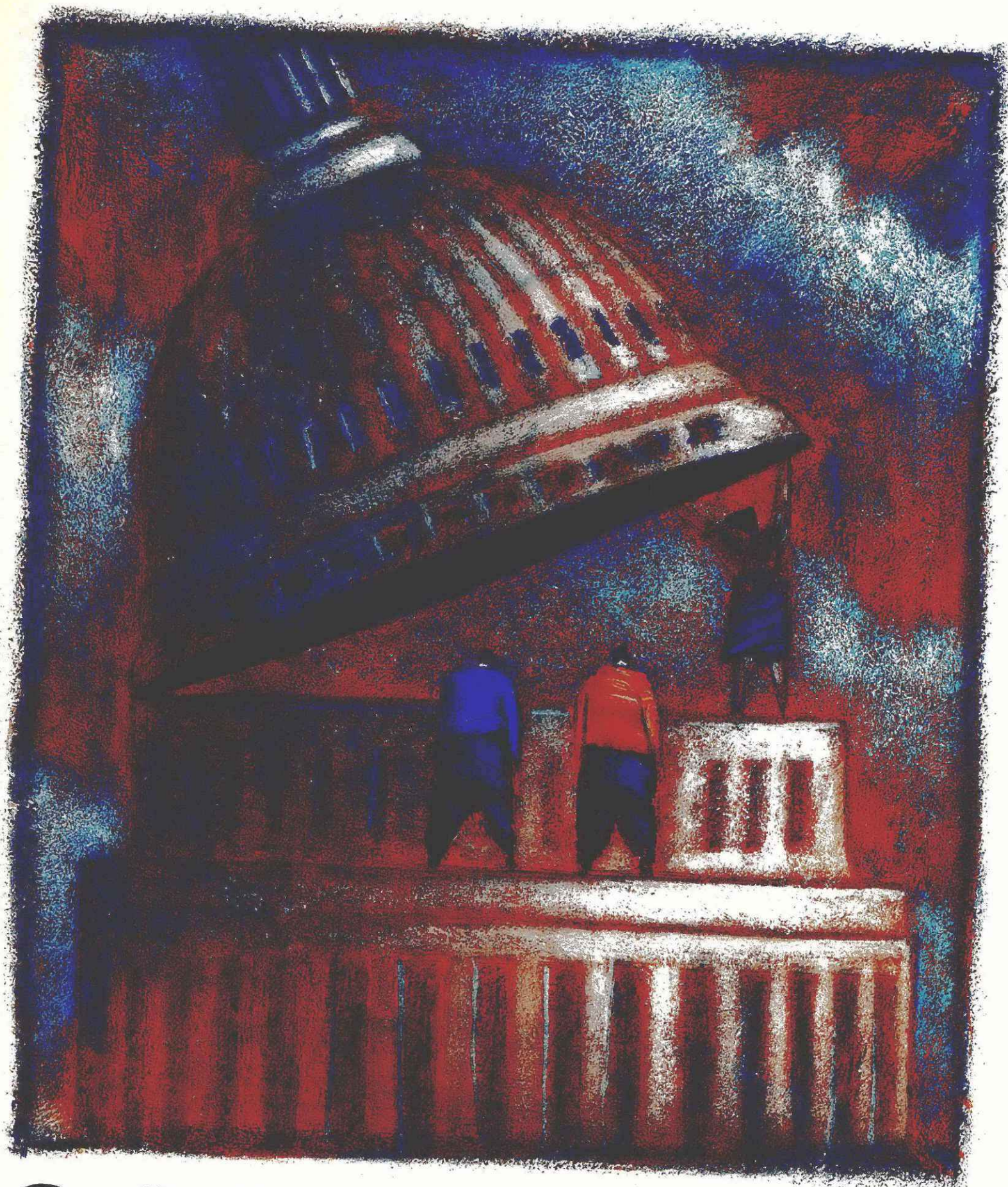


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Risk managers urged to be involved in contract process

By JOANNE WOJCIK

SAN DIEGO—Risk managers should get involved early in the negotiation of business contracts—especially those that contain indemnification agreements—to avoid costly litigation, legal experts advise.

"Every contract needs to be looked at individually," said William L. Granahan, a senior consultant at Milliman & Robertson Inc. in Worcester, Mass.

"You need to be involved in that process. They've got to get you, as a

Contractual agreements that shift risks through indemnification and other provisions are common in many commercial relationships, according to Mr. Hummer.

In the construction industry, for example, indemnification provisions are often incorporated into the agreements between the owners and their general contractors and between the general contractors and their subcontractors as each party seeks protection against future loss and damages arising from negligence at a job site, he said.

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risk manager, the contract immediately. And it has to be the entire contract," he said.

Only then can the risk manager determine whether there has been adequate risk transfer, Mr. Granahan said during a session at the Risk & Insurance Management Society Inc.'s recent annual conference in San Diego.

"The language that we see (in contracts) is confusing and often misrepresents the intended relationship" between the parties, he said.

Contracts also often contain indemnification and/or hold-harmless provisions that cannot be enforced, according to Paul M. Hummer, an attorney with Saul, Ewing, Remick & Saul L.L.P. in Philadelphia.

Problems with contract interpretation often arise "either because the parties don't properly document what their agreement is. Or, they fail to anticipate some legal hurdles in the enforceability or validity of that agreement," Mr. Hummer said.

Furthermore, courts look suspiciously on indemnification agreements in contracts because "they change the way the law would otherwise allocate the risk," he added.

As a result, courts "will look for ways to construe the agreement against the party who is supposed to be indemnified because they don't want to do significant damage to the way the law would otherwise allocate the risk," Mr. Hummer said.

Because courts interpret contracts so narrowly, risk managers need to "step back and say, 'What is it that I want out of this indemnification agreement,'" Mr. Hummer advised.

They should ask themselves, "What is the business agenda that I hope to get out of this indemnification agreement?" he said.

Unfortunately, all too often risk managers get resistance to their assertions that they should be involved in negotiations because the other parties involved fear that the risk manager will find items that he or she thinks should be changed, according to Mr. Granahan.

"If the risk manager finds a problem, the person negotiating the contract may object, saying he or she is trying to stop the deal," he suggested.

"But I've seen so many homemade contracts" that a risk management review is essential, he asserted.

He also advised that risk managers ask to see the entire contract, not just the insurance-related or indemnification-related provisions.

"You must get the entire contract so you can read what's intended," he said.

'They've got to get you, as a risk manager, the contract immediately,' says William L. Granahan of Milliman & Robertson.

Similarly, commercial real estate lessors often require tenants to both indemnify them and provide their own insurance for losses, including personal injury and property damage, which result from the tenant's business operations, he continued.

Today, indemnifications from environmental liabilities are common features in agreements to purchase real estate or other corporate assets, according to Mr. Hummer.

While companies often attempt to insure the contractual risk being transferred, such as by naming the party being indemnified as an additional insured, there are limitations and potential pitfalls if the contracts are not properly drafted, he said.

For example, some states prohibit transferring certain risks, especially when doing so violates public policy, he said.

In some industries "there is a great deal of risk to persons or property, and the law wants to encourage people to be careful, and indemnity provisions essentially encourage people not to be careful, because they know they will not bear the financial risk," he explained.

To avoid the possibility that a court may nullify an indemnification provision in a contract, Mr. Hummer suggests that a severability provision be included that would allow the portion that violates the law to be cut out while letting the remainder of the agreement stand.

Risk managers need to realize that indemnification agreements don't really transfer risk, he pointed out. Rather, they merely provide a promise to pay damages owed by another party to the contract.

Therefore, "if you have an indemnification agreement from another company, you are still subject to suit by an injured party, and a judgment will be entered on that suit, and you will be obligated to pay that judgment unless and until the party that agreed to indemnify you satisfies that obligation," he said.

Because it's possible that not all of a risk will be transferred by an indemnification agreement, Mr. Hummer advises risk managers to consider purchasing insurance.

"This shifts the liability to the insurance company," he said.

Mr. Granahan coordinated the session. **BI**

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<input type="checkbox"/> E Educational Inst	<input type="checkbox"/> J Actry/Attorney	<input type="checkbox"/> O Other
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Risk managers not lost in space

Have access to the Internet:

Risk managers	91.5%
All respondents	93.1%

Access Internet once or more daily:

Risk managers	76.8%
All respondents	80.1%

Usage of the Internet:

E-mail	87.7%
Research	76.9%
News	73.8%
Exchange information	47.7%
Entertainment	16.9%
Shopping	10.8%

* Risk managers only
Source: BI survey

GRAPHIC BY MIKE GARVEY

Risk managers use Internet most often for e-mail, information

Nine out of 10 risk managers are cruising the Internet, with about three-quarters venturing into cyberspace at least once a day.

Sending electronic mail tops risk managers' online activities, followed closely by conducting research and gathering news.

Those are among the results of an informal survey conducted by *Business Insurance* during the annual Risk & Insurance Management Society Inc. conference to take a snapshot of attendees' Internet usage and preferences.

Of 146 respondents, nearly half—48.6%—were risk managers, with consultants accounting for 10.7%; agents or brokers, 8.2%; insurers, 6.8%; and miscellaneous others comprising the remainder.

Among all respondents, 93.1% have access to the Internet. Of those without access, 60% plan to obtain access by year-end, while 30% have no plans to go online and 10% were unsure.

Risk managers reported similar experience, with 91.5% having Internet access. Of the risk managers not online, 66.6% plan to obtain access by year-end, while 16.6% said they do not and an equal percentage reported being unsure.

Among all respondents with access, 48.5% access the Internet several times daily, while 31.6% access the Net once a day. Another 15.4% gain access weekly, with the remainder logging in on a monthly basis or less.

Among risk managers, 43% access the Net several times a day, while 33.8% access it once a day, 16.9% have weekly access, and the remainder have less frequent access.

Sending e-mail was the most popular use of the Internet, cited by 89% of all respondents with Internet access and 87.7% of the

risk managers.

The second most popular use was for conducting research, cited by 81.6% of all respondents and 76.9% of risk managers.

Other Internet uses included:

- News, 73.5% of all respondents and 73.8% of risk managers.

- Exchange of information, 47.8% of all respondents and 47.7% of risk managers.

- Entertainment, 21.3% of all respondents and 16.9% of risk managers.

- Shopping, 12.5% of all respondents and 10.8% of risk managers.

The majority of respondents see no use of the Internet for insurance purchases, the survey found.

Among all respondents, 67.1% would not use the Internet to purchase personal lines coverages, while 29.4% would buy personal insurance online. The remainder reported being unsure or did not answer.

An even greater percentage, 78.1%, would not buy commercial lines coverage over the Net, while 13.7% would do so.

Among risk managers, 76.1% would not buy personal lines insurance online, and 88.7% would not buy commercial lines coverage.

About one in five risk managers, or 22.5%, would, however, buy personal lines insurance on the Internet. Only 8.5% said they would be willing to buy commercial lines coverage over the Internet.

Risk managers' online usage has soared over the past three years.

A similar survey conducted at the 1995 RIMS conference in San Francisco found that only 35% of risk managers used an online service, such as America Online or RIMSNET, compared with the more than 90% that today have online access to the Internet (*BI*, May 8, 1995). **BI**

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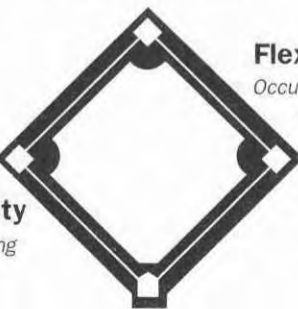
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Ruling

Continued from page 2
to the county.

In overturning the lower court decision, the appellate court focused on language in the Insurance Code, which the state Legislature amended in 1997. The code states that covered claims do not include "any obligations to any state or to the federal government."

CIGA had successfully argued in the lower court that this language covered county governments as well. But the appellate decision ruled that CIGA's argument "rests on an ungrammatical reading of the critical text."

In addition, "the clear implication from the way the word 'state' is used in the Insurance Code is that the Legislature did not intend the word to include local government bodies."

"If one were to diagram the sentence, one would see that the words 'to any state' and 'to the federal government' are both parallel modifications of the words 'any obligations'...so 'state' can stand on its own."

"There are several ways the Legislature might have phrased the statute if it had wanted to convey the idea that it should apply to 'any state government.' The Legislature could have written very simply: 'to any state or federal government.' Or, more explicitly, it might have said: 'to any level of state or federal government.' Or even: 'to any governmental body, local, state or federal,'" said the decision.

"There are numerous places elsewhere in the Insurance Code where the Legislature felt compelled to elaborate on the various levels and

AMAC

Continued from page 2

"When two companies merge, you are going to end up with one company, and that company" may not have been interested in joining a risk retention group, Mr. Dunn said.

Business written by the risk retention group, which provided limits from \$1 million to \$5 million, has declined dramatically over the past few years. Last year, it produced net written premiums of \$54,000, down from just under \$300,000 in 1996 and \$1.1 million in 1995.

The risk retention group, though, is expected to have sufficient assets to cover liabilities as claims are paid, according to Iowa Department of Insurance officials. At year-end 1997, AMAC had about \$6.5 million in assets and \$3 million in liabilities.

The winding down of AMAC will bring an end to yet another risk retention group. Of the 128 risk retention groups formed since Congress passed legislation allowing the special-purpose, multiple-owner captive insurers to operate nationwide after being licensed in one state, 35 have voluntarily ceased operations, are being run off, have been declared insolvent, are in rehabilitation or never actually began operations, according to The Risk Retention Reporter, a Pasadena, Calif.-based newsletter that covers the industry.

In recent years, the number of risk retention groups operating has remained stable at just under 70. While some risk retention groups can't compete over the long haul with commercial insurers, new groups continue to be launched.

"If you want to do business nationwide, RRGs can be very attractive. You don't need a fronting carrier, and there are no rate and form restrictions," said Jon Harkavy, vp and general counsel with USA Risk Services in Arlington, Va. **B**

forms of government which exist by virtue of state law...The logical and natural reading of the statute, then, is that covered claims do not include obligations to 'any state.' Period."

The decision also says the California Legislature does not use the word "state" elsewhere in the Insurance Code to include local government bodies. While these other examples do not deal directly with CIGA, it is also "inescapably clear" that the Legislature does not consider the word "state" as shorthand for political subdivisions or districts "or some variation on that theme," the court ruled.

"Time and again the Legislature felt the need to add such extra words," it said.

The decision also noted that, for purposes of tort claims, the Legislature distinguishes local public entities from the state. It would, therefore, make sense for the Leg-

islature to permit them to press claims against CIGA while prohibiting the collection of claims by the state itself, the court said.

"The statute thus boils down to the Legislature's decision as to who should bear a loss as between

'Now CIGA has to pay claims that I think the insurance industry never envisioned,' says Thomas L. Wilson.

local governments and CIGA. And as between forcing a loss on CIGA or on the taxpayers, it is hardly absurd to prefer the taxpayers over CIGA," the decision states.

Commenting on the decision, Thomas L. Wilson of Los Angeles-

based Martin, Wilson, Erickson & MacDowell, who was originally hired by Citation to represent FST in the litigation and has since been retained by CIGA, said the decision is significant. "It's unfortunate," he said, contending that the guaranty association's fund is to be used for "fairly specific purposes" and was not set up for claims by the state.

"It's pretty clear to me that the statute was never intended to pay for the claims (from governmental agencies) because CIGA is a fund of last resort, and insurance companies have to contribute to it," said Mr. Wilson. "I think it would have been a better opinion had it been more limited. Now CIGA has to pay claims that I think the insurance industry never envisioned," he said.

"Private insurance companies are going to be funding claims by governmental entities that are

brought against insolvent insurers, and I don't think they had that in mind," added Mr. Wilson, who said no decision has been made as to whether to appeal.

"We think it was right," said Thomas Agin, assistant county counsel for Orange County, who agreed the case is significant. He noted that the same day the decision came out, the same court cited it to support its decision in *North College County Community College District vs. CM School Supply Co.*, which it described as a companion case. In that decision, the court said community college districts can be distinguished from the state as well and also can collect funds from CIGA.

County of Orange vs. FST Sand & Gravel Inc., No. G020355, Court of Appeal of the State of California, Fourth Appellate District, Division Three.

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For the Record

Duty to defend remains if employer sues worker

LOS ANGELES—An employer's insurer must pay for the defense of a covered employee even if the employer is the one suing the employee for a wrongful act, a California appellate court has ruled.

"We see nothing unfair or illogical in providing appellant with a defense that would have been available to her had the suit been brought by a third party," said the appellate court in Los Angeles in *Gladys A. Alvarez vs. Coregis Insurance Co.*

The court noted in its April 29 ruling that the allegations made against Ms. Alvarez are still unproved and may not be true. It is possible Ms. Alvarez "was simply negligent or a mere dupe for other persons," the decision states.

Robert W. Keaster, an attorney with Los Angeles-based Charlston, Revich & Williams, who represented Chicago-based Coregis in the case, said an appeal is being considered.

According to court papers, Pasadena, Calif.-based Victory Mortessori

Schools Inc. sued Ms. Alvarez, who had been a bookkeeper there, and others in 1995 accusing them of embezzlement. Coregis, which had provided a "school package policy" to Victory, refused to defend Ms. Alvarez. She in turn then sued Coregis for breach of contract and other charges in connection with its refusal.

In overturning a lower court decision and ruling in her favor, the state appeals court found that as an employee, she was an additional insured under the policy and "the express terms of the insurance policy require a defense and do not exclude claims or litigation between insureds." However, there is no duty to pay claims stemming from criminal acts including embezzlement.

"The duty of an insurer to defend is more extensive than the duty to indemnify," says the decision. "Therefore, insurance policy provisions are liberally construed in favor of the broad duty to defend an insured, and are narrowly construed against the insurer."

In response to Coregis' argument that Ms. Alvarez' actions were "outside the scope of employment," the court said its policy did not define the term. But, because she is charged with misusing her position to embezzle

funds, "the alleged wrongdoing is clearly within the scope" of her employment, the court reasoned.

The court also ruled Coregis was obligated to provide Ms. Alvarez with a defense in connection with a related suit filed against her by the Bank of America.

Ms. Alvarez' attorney could not be reached for comment.

California comp insurers' fines increased in 1997

SAN FRANCISCO—California state auditors issued nearly 10,000 penalty assessments totaling \$1.27 billion against workers compensation insurers and other claims administrators during 1997, the Department of Industrial Relations' Division of Workers' Compensation reported last month.

The total penalty assessment amount rose from \$1.16 billion in 1996 even though there were 4,000 fewer files audited during 1997. The number of penalties increased by 3.3% and the average amount per assessment increased 5.4%.

The numbers are unacceptably high and they show that the industry needs to improve its performance, said Casey L. Young, administrative direc-

tor for the DWC. "Again this year we are finding unacceptably high amounts of unpaid compensation due to injured workers, late payment of benefits, and failure to notify employees of their rights to benefits in a timely manner," Mr. Young said.

Failure to provide proper benefit notices to injured workers or sending them late was the most common violation, accounting for more than 48% of penalties.

Contractor seeks review of CGL coverage ruling

LOS ANGELES—Peck/Jones Construction Corp. last week petitioned the California Supreme Court to review an appellate court ruling that denied the general contractor coverage for a missed completion deadline.

The ruling "significantly diminishes" contractors' coverage because of the decision's broad language, said Jerry A. Ramsey of Engstrom, Lipscomb & Lack in Los Angeles, who represents the contractor.

The second appellate district court in Los Angeles found in *Truck Insurance Exchange et al. vs. The Superior Court of Los Angeles County* that a general contractor's commercial general liability policy does not provide coverage for the contractor's negligent failure to meet a contractual deadline for completion of a construction project.

The decision is a "matter of concern to all contractors in the state," said Mr. Ramsey.

According to the decision, Peck/Jones had agreed in a contract to complete an office building no later than July 30, 1989, but was eight months late and subsequently was sued.

Although it provided a defense, the Los Angeles-based Truck Insurance Exchange, which is part of the Farmers Insurance Group, refused to pay the more than \$2.2 million judgment, pointing to the CGL policy's language. Peck/Jones then sued for breach of insurance contract and bad

faith.

In overturning a lower court decision and ruling in TIE's favor, the court said liability for breach of contract is not covered under the CGL policy.

Finding coverage for Peck/Jones would "have the effect of making (TIE) a sort of silent business partner subject to great risk in the economic venture without any prospects of sharing in the economic benefit."

"The expansion of the scope of the insurer's liability would be enormous without corresponding compensation," said the court, quoting a decision in another case.

"I thought that the wrong decision was reached," said Mr. Ramsey. "My feeling is this was a...manuscripted policy that was very favorable to Peck/Jones on coverage issues" and the policy's special features were not addressed by the court.

TIE's attorney had no comment.

Kentucky's work comp market back in black

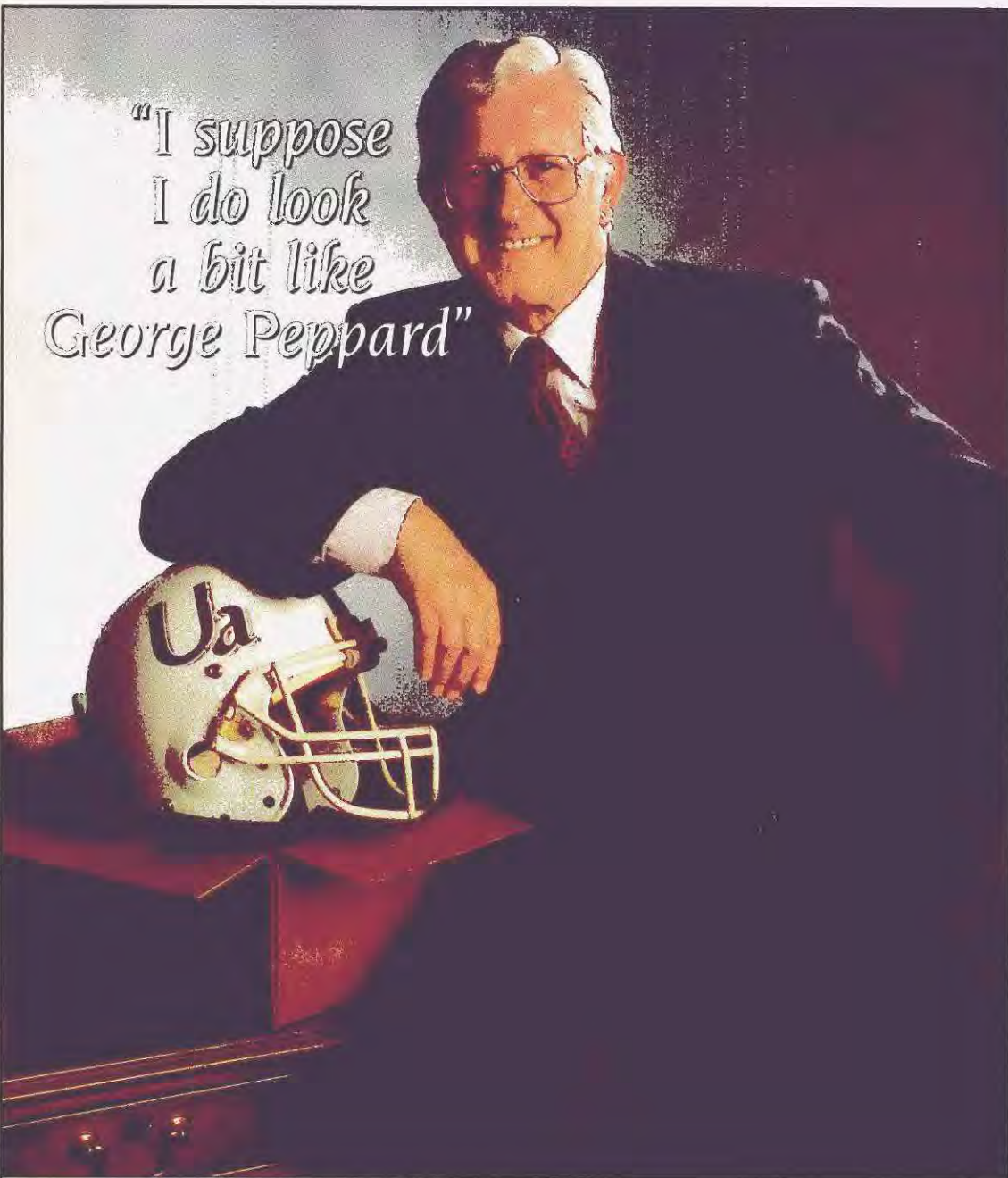
LEXINGTON, Ky.—The workers compensation residual market in Kentucky reached a financial milestone as it ended 1997 in the black for the first time in 14 years.

The residual market reported an underwriting gain of almost \$500,000 in its 1997 financial statements, according to Kentucky Employers' Mutual Insurance. KEMI, the state's largest writer of workers comp coverage, assumed responsibility for residual market operations in September 1995.

"Underwriting gain or loss is just one measure of an insurance company's financial condition and efficiency, but it's an important one," said Roger Fries, president and chief executive officer of KEMI.

KEMI's focus now is to continue building an adequate surplus and to maintain positive trends reflected in the 1997 report, it said in a statement. **BI**

"I suppose
I do look
a bit like
George Peppard"



The "A Team" just gets better

Unionamerica has strengthened its Binder Team's presence in the US market with the additional signing of Peter Reeve.

Unionamerica, founded in 1971, is a specialty casualty and property insurer and reinsurer operating in

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INTERNATIONAL

Global Briefs

Japanese insurer Sumitomo Corp. and Zurich, Switzerland-based Zurich Insurance Co. have joined forces to offer risk financing services to Japanese corporations. The operation is expected to start next month and will offer a variety of risk financing products, including captive insurance management, through Bluewell Insurance Brokers Corp., a Sumitomo unit. . . A.M. Best Europe Ltd. has upgraded its rating of London-based Terra Nova Insurance Co. Ltd. and Bermuda-based Terra Nova (Bermuda) Insurance Co. Ltd. to A, or excellent, from A-, Best Europe said the rating reflects the Terra Nova group's "excellent financial performance, liquidity and conservative investment strategy." The rating agency also cited experienced management, improving financial performance and expanding geographic presence as positive features. . . Swiss Reinsurance Co. has agreed to purchase USF&G Corp. unit Falcon Asset Management. The sale, whose terms were not disclosed but is expected to be completed in June, will expand Swiss Re's asset and liability management business. Baltimore-based USF&G announced plans earlier this year to merge with The St. Paul Cos. Inc. (BI, Jan. 26). . . Stephen Pearson has been appointed a partner in the insurance and reinsurance group of City of London law firm Gouldens. . . Sedgwick Ltd., the U.K. unit of Sedgwick Group P.L.C., has allied with PLC Consultancy Services to offer Fraudline, a new fraud hot line to employer clients. The service allows employees to call a confidential telephone number without fear of retribution if they are concerned fraud is being committed in the workplace. Subscribers pay an annual fee, plus a fee per call made to the service. . . London law firm Lovell White Durrant has introduced insurance legal services to its New York office with the appointment of Gary Lee as head of a new team. Partner Gail Goering and Associate Jordan Rudnick also will be joining the team, which will focus on insurance and reinsurance dispute resolution and international insurance insolvency. . . European Commission competition regulators have approved the merger between U.K. multiline insurers General Accident P.L.C. and Commercial Union P.L.C. Approval is still being sought from U.S. regulators. . . Lloyd's corporate investor Angerstein Underwriting Trust P.L.C. is to merge its managing agency operations, JE Mumford (Underwriting Agencies) Ltd. and PB Coffey (Underwriting Agency) Ltd., to form Angerstein Underwriting Ltd. Subject to approval, the new agency will operate beginning next month, headed by John Mumford as chief executive and Martin Hewett as managing director. . . London-based international loss adjuster CCS Global has entered an agreement with U.K. loss adjuster Davies & Co. to set up the first stage of a planned global network. Davies will supply CCS Global, part of the Eastgate Group, with U.K. support through its 26 offices. . . TIG Reinsurance Co. has appointed Peter N. Middleton senior vp and general manager of TIG Re's London branch office. Mr. Middleton previously was general manager-international underwriting for St. Paul Re in London and before that served as chief executive of Lloyd's of London. . . Skandia Insurance Co. Ltd. is not looking to be acquired, according to Harry Voss, head of group business control at the Stockholm, Sweden-based insurer. While stock analysts recently have said Skandia is a potential acquisition target, Mr. Voss said last week that Skandia plans to concentrate on its core business areas of retirement plans, property/casualty insurance and asset management.

Spain mine pollution covered

SEVILLE, Spain—Canadian-Swedish mining company Boliden Ltd has insurance coverage for last month's pollution incident at its Los Frailes mine in southern Spain, but the company is awaiting consultants' reports before it can assess the extent of the damage.

James Borland, vp of investor relations at Toronto-based Boliden, said the organization's full insurance coverage for the incident includes liability and business interruption coverages.

Mr. Borland could not provide any further information about Boliden's insurance.

The accident happened late last month, when a dike retaining a tailings pond burst, releas-

ing an estimated 175.5 million cubic feet of contaminated water into the Rio Agrio near Aznalcollar in Andalusia.

The incident resulted in 8 million tons of acidic mud being dumped along the banks of the Rio Guadiamar, the river into which the Agrio runs.

Although reports are being prepared by independent consultants from Sweden, Spain and Canada and the local government authorities, Mr. Borland said preliminary indications are that the earth gave way beneath the dam, causing it to collapse.

Los Frailes started operating late last year and was anticipated to mine up to 4.4 million tons

See Mine on next page

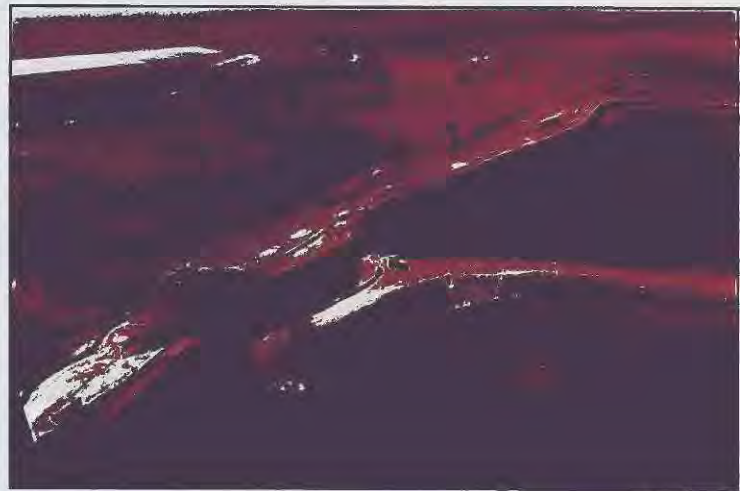


PHOTO: AFP
An aerial view shows the broken dam that released contaminated water late last month in southern Spain.

Australian risk surveys show division
Small, medium-sized companies question need for risk management: Study

By YVETTE HIGGINS

While large Australian companies generally employ good risk management practices, many small and medium-size businesses do not understand the need for risk management programs, two surveys show.

The New York office of Coopers & Lybrand L.L.P. surveyed 20 major Australian corporations last December. The results, released this month, found that awareness of corporate governance requirements and the need for risk management is growing, but

some corporations are slow to implement risk management procedures, said Robin Low, a partner in the risk and control practice of Coopers & Lybrand in Sydney.

The Australian study was part of an international survey of 140 large corporations in Australia, the United States, Canada, the United Kingdom, France, Germany and the Netherlands.

A separate survey showed that small and medium-size enterprises, also known as SMEs, are reluctant to implement risk management to minimize losses because

they think it is "counter to sales maximization."

The Melbourne, Australia-based Australian Securities Commission, the federal regulatory authority for companies, defines SMEs as businesses with annual consolidated gross revenues of less than \$10 million Australian (\$6.4 million), assets of less than \$5 million Australian (\$3.2 million) and fewer than 50 employees.

The survey was commissioned by the ASC and conducted by Melbourne-based market

See Australia on next page

Report recommends U.K. rail changes

By MATTHEW MacDERMOTT

LONDON—A government investigation of a 1996 train crash on the main rail line between London and northwest England lays blame for the accident on driver error but also suggests widespread improvement in the risk management of Britain's railways.

The U.K. Health and Safety Executive's report characterized its recommendations as "reasonably practical steps toward the control of risks arising from the operation of a railway network."

The HSE added that the rec-

ommendations are not targeted solely at Railtrack P.L.C., the operator of the U.K.'s railway infrastructure, and Silverlink Train Services Ltd., the operator of the trains involved in the 1996 crash at Watford Junction, but at all companies that build, own, operate or maintain railway services in the United Kingdom. Under the U.K.'s privatized rail system, Railtrack is responsible for infrastructure, including signaling and tracks. Separate companies own and operate the trains.

The HSE report on the Watford crash makes 21 recommendations for Railtrack and Sil-

verlink, previously known as North London Railways. Railtrack and Silverlink have two months to address the recommendations, or they could face formal enforcement action from the HSE. Railtrack said the company will "study the recommendations to see where valuable lessons can be learned and applied."

Some of the recommendations are general improvements to rail safety procedures, but others relate specifically to aspects of the Watford crash.

One of the key recommendations is for Railtrack to investigate the cost of installing an au-

tomatic train protection system, which can be fitted to tracks to prevent trains from passing red signals. Before Britain's rail system was privatized, British Rail, the state-owned railway, in 1994 ran a pilot test of an ATP system but concluded it was too expensive to be widely adopted throughout Britain's rail network.

The HSE has now asked Railtrack to evaluate the full cost of the Watford crash and other recent accidents against the cost of widespread implementation of an ATP system on Britain's railways. Railtrack would not

See Trains on page 59

Louvre theft aided by security limitations



PHOTO: AFP
This painting by Camille Corot was stolen earlier this month from the Louvre in France during a free-admission Sunday when 20,000 visitors entered the museum between 9 a.m. and 1 p.m.

PARIS—The theft earlier this month of a painting from the Musee Louvre will not increase fine arts insurance rates but has raised scrutiny of security at the Paris museum.

"Le Chemin de Sevres" by French artist Camille Corot was stolen at the beginning of this month from a packed museum. Every first Sunday of the month, gallery admission is free, and about 20,000 people had entered the museum between the 9 a.m. opening and the time the painting was stolen, at around 1 p.m. The theft was discovered shortly after it occurred.

The painting, measuring about 13 1/2 inches by 19 1/2 inches, had been valued at 8 million French francs (\$1.3 million) for insurance purposes when it was lent to another Parisian gallery, the Grand Palais, for an exhibition. But artwork that hangs in the government-owned Louvre is covered by a government indemnity, so the insurance market will not bear the loss.

A spokeswoman for the Louvre said the museum's security efforts are hampered because the building was

designed in the 18th century to be a palace, making it difficult to accommodate modern security systems.

The spokeswoman said the painting, which hung in the corner of a gallery and away from the sight of security cameras, had been removed from its wooden mounting without any damage. Art experts say it would have taken between five and 10 minutes to take the painting out of the glass and off its wooden mounting and say it is possible it had been stolen at a collector's request. Although French police have been interviewing numerous people who visited the gallery that day, it still is not known how many people were involved in the theft.

The painting has been logged in the Art Loss Register, a database of stolen artworks used by international police forces and art dealers around the world.

This is the second theft from the Louvre this year. In January, thieves made off with a Greek stele, which has not been recovered.

—By Sarah Goddard

Australia

Continued from previous page
research company Chant Link & Associates Pty. Ltd.

The survey of 200 Victoria-based manufacturers, retailers and service providers late last year showed manufacturers and professional service businesses are slightly more aware of risk management strategies for reducing business risks and more likely to conduct credit checks as a systematic way to determine risk than trade-oriented businesses such as plumbing and carpentry, which had a less-sophisticated approach to regulatory compliance and risk management.

Many SMEs surveyed had no knowledge of corporate law and relied heavily on external accountants to ensure they complied with corporate governance and other legal requirements, the report said.

Furthermore, the report found that many SMEs' only risk management strategies were to deal solely with large, well-known suppliers and

are "preoccupied with making brass widgets and finding customers, and the risks of business activities are peripheral."

'Risk management is linked to corporate governance, which is about directors giving assurances that their businesses are well controlled,' says Robin Low.

"hope for the best."

Kevin Knight, the Brisbane, Australia-based secretary and director of the Federation of Asian, Pacific & African Risk Management Organizations and risk management coordinator-finance directorate of the Queensland Department of Education, said many small businesses

Risk management implementation in SMEs has to improve, and industry associations—for example, the Motor Trades Assn. of Queensland and the Australian Institute of Company Directors—have a duty to make them aware of risk management, Mr. Knight said.

"Associations have to come to grips with risk management so they can provide risk management services to members," he said.

Bruce Ferguson, director of the Assn. of Risk & Insurance Managers of Australasia and group risk manager of the Sydney Water Corp., said many an SME would not implement risk management and corporate governance until it faced a claim, such as a directors and officers liability lawsuit. Implementing risk management procedures before a lawsuit, however, could ensure the survival of a small business, he said.

Jonathan Sesel, president of the Australian Institute of Risk Management and senior manager-risk management and compliance of Sydney-based NRMA Ltd., said SMEs tend to incorporate risk management into daily business practices rather than make it a separate function. He said larger corporations have sophisticated structures that better lend themselves to the introduction of risk manage-

ment techniques.

Coopers & Lybrand's Ms. Low said that, unlike many SMEs, Australia's large corporations recognize they can use risk management to achieve corporate strategies.

Australia's large corporations initially used risk management reactively to "limit the potential for embarrassment," but now realize "it made good business sense to use it proactively to meet corporate strategies," she said. "Risk management has been driven by the need for companies to deliver results. They want to protect themselves and take any opportunity to ensure they meet business expectations."

Risk management requires cultural change within an organization, and that often is time-consuming and difficult, Ms. Low said. But there has been a "marked improvement" among corporations'

that their businesses are well controlled," she explained.

Mr. Knight said the development of a risk management standard for Australia and New Zealand three years ago by an Australian federal government body (BI, March 6, 1995), also encouraged risk management implementation, because companies now have a benchmark against which to audit.

Mr. Ferguson said the rate of risk management implementation in organizations varies because of differing corporate cultures and management styles.

The Coopers & Lybrand survey reinforced many of the findings of a global survey conducted last year by the accounting firm Price Waterhouse. The earlier survey showed that Australian companies were adopting a more formal approach to risk management (BI, Sept. 27,

Many small businesses are 'preoccupied with making brass widgets and finding customers, and the risks of business activities are peripheral,' says Kevin Knight.

understanding of the need for and benefits of risk management in the past two years, she said.

Ms. Low said Australian corporations recognize the need to strive for world-class practices. In addition, she said, the Australian Stock Exchange requirement, introduced in July 1996 was a catalyst for them to introduce risk management. The requirement compels listed companies to provide corporate governance information, including details of risk management activities, in annual reports.

"Risk management is linked to corporate governance, which is about directors giving assurances

1997).

Risk specialists at Price Waterhouse offices throughout the world interviewed 85 risk managers, selected from major U.S., U.K. and Australasian companies. The study included 35 Australian risk managers' views.

The Coopers & Lybrand survey is not available to the public.

Free copies of the Australian Securities Commission survey are available from Infoline, Australian Securities Commission, 14-22 Grey St., Traralgon, Victoria 3844; 61-1300-300-630; e-mail: infoline@asc.gov.au.



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Mine

Continued from previous page

of ore at peak annual production. When it started, Boliden estimated it would mine 2.3 million tons of ore last year, producing 135.6 million pounds of zinc, 48.9 million pounds of lead, 6.4 million pounds of copper and 88,000 pounds of silver. Mr. Borland said the company does not know how long the mine will be out of production.

More than 8,500 acres of crops have been destroyed by the disaster, according to the Spanish agricultural ministry, which estimates the related loss at \$10 million. A local farmers' association estimates cleanup costs at \$120 million.

Boliden last week received approval from Spanish authorities to start cleaning up the contamination and has set up an emergency fund for local farmers. The fund will compensate farmers for loss of income from crops that have been destroyed and soil that cannot support a harvest, to be assessed by an independent consultant.

Boliden estimates the agreement could cost up to \$6.5 million, but it will not be accepting liability for the accident. If Boliden is found liable, its third-party liability coverage likely will fund the payments.

Boliden President Anders Bulow has said Spanish courts may ultimately decide responsibility for cleanup costs. Spanish law can levy hefty fines and prison sen-

tences on representatives of companies that pollute.

Altogether, about 5,000 acres of land were flooded by the mixture of highly acidic water and heavy metals, damaging crops and killing wildlife. More than 13 tons of dead fish have been collected by volunteers, and local residents have been warned not to drink water from wells in the area or eat locally caught fish.

Threats to the Donana National

Boliden President Anders Bulow has said Spanish courts may ultimately decide responsibility for cleanup costs.

Park, a United Nations World Heritage Site near the affected area, were averted when the water was channeled into the Rio Guadalquivir.

Visitors to the region were warned not to buy fruit, seafood or vegetables from roadside vendors, as they may be contaminated with elements such as mercury and lead, but representatives from the Andalusian government said it would destroy any contaminated foodstuffs before they reach consumers.

A few injuries were reported in connection with the accident. It was unclear if the Spanish government would create a disaster fund.

—By Sarah Goddard

Trains

Continued from page 57

comment on losses from the Watford crash nor insurance arrangements for covering those losses. The HSE estimates visible costs of the accident at "several million pounds." The Watford incident occurred Aug. 8, 1996, when a full passenger train and an empty passenger train crashed at Watford Junction, killing one passenger and injuring 69 (BI, Aug. 19, 1996; Aug. 12, 1996).

The release of the HSE report was delayed until recently because the driver of the passenger train, Peter Afford, was charged with manslaughter by the British Transport Police (BI, Jan. 27, 1997). The HSE could not publish the report while legal proceedings against the driver were continuing.

Mr. Afford was found innocent in Luton Crown Court on March 11.

There is no evidence to justify legal proceedings against any other parties involved in the Watford crash, the HSE report concluded.

The primary cause of the accident was Mr. Afford failing to stop at a red track signal, the report states. It said Mr. Afford did not react correctly to two yellow caution signals, which should have prompted him to slow down and prepare to stop by the time he reached the red light.

When Mr. Afford saw the red signal and applied the brakes, his train's speed carried it 222 yards

past the signal and across a junction with another line. An empty passenger train approaching on that line was unable to avoid a collision with Mr. Afford's train.

Although the HSE report put the primary blame for the Watford crash on Mr. Afford, the report also said there were several "mitigating and contributing factors" to the accident, including signal positioning, reduced stopping distance and braking system deficiencies.

Specifically, the report said one of the yellow caution signals in the Watford crash was placed in an inappropriate position, which confused Mr. Afford. The HSE recommends that Railtrack remove "ambiguity" in its signaling.

The report said the positioning of the red signal also gave Mr. Afford a shorter-than-normal distance—known as an overlap—in which to

stop before reaching a point where the lines crossed. Railtrack should identify all locations with insufficient overlaps, conduct risk assessments and take appropriate action, the HSE report said.

'Ambiguity' in signaling helped lead to the Watford rail accident, says the Health and Safety Executive report.

The HSE report also contends that if the braking systems had been replaced with more advanced technology, it is likely the train would have stopped short of the junction with the other line. The HSE has recom-

mended Silverlink quickly replace the braking systems on its passenger trains.

Other recommendations by the HSE include: adoption of a track layout risk assessment to identify the risk of collisions at specific locations; identifying and prioritizing junctions that require redesign or additional safety measures; a review of all current resignaling projects; procedures to ensure effective driver briefings; programs to identify and reduce the number of incident-prone drivers; a full audit of train speed limits; extending the use of information obtained from on-board train data recorders; and a review of the quality of trains' interior fittings under crash conditions.

Only one day after the release of the HSE report, there was a near collision between two rush-hour commuter trains at London's Can-

non Street station, a terminal for city-bound travelers from southeast England and Kent.

The near collision occurred when an outbound train stopped within 6 feet of a London-bound train on the same track. As one of the trains reversed into Cannon Street, the wheels of one of its coaches left the track. No passengers were hurt. A spokeswoman for HSE said the cause of the incident is not yet known but that HSE investigations are continuing.

On May 4, a freight train carrying iron ore was derailed at Cardiff South Junction in Wales. The HSE spokeswoman said no other train was involved and no one was injured. She said the cause of the incident, in which 11 coaches derailed, is not yet known, but the HSE is investigating the track and signals and the train's load and speed. **BI**

Damages schedule disputed

LONDON—Britain's highest court, the House of Lords, is reviewing the amount of damages awarded to accident victims in three test cases using the so-called Ogden Tables.

Each of the three victims appealed lower court decisions that reduced by one-third their higher-than-usual injury compensation awarded by the U.K. High Court. The High Court had based the awards on the actuarial tables developed by senior lawyer Sir Michael Ogden that calculate personal injury awards according to a fixed rate of return on index-linked stocks (BI, Nov. 4, 1996).

If the House of Lords approves the higher awards, insurers could have to pay an additional £450 million (\$749.7 million) in pending injury cases, said a spokesman for the Assn. of British Insurers.

Meanwhile, the Manchester High Court last week began hearing a secondhand smoke liability case. A nurse, Sylvia Sparrow, is seeking unspecified damages from her former employer, residential nursing home operator St. Andrew's Homes Ltd. The nurse claims she developed asthma and severe chest problems because St. Andrew's did not place her in a smoke-free working environment.

St. Andrew's officials could not be reached last week.

If the court awards damages, the case could set a precedent, said Carol Brooks-Johnson, a lawyer with Manchester law firm Pannone & Partners. Other secondhand smoke claims filed so far in the United Kingdom have been settled out of court, she noted.

—By Carolyn Aldred

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Transit

Continued from page 1

Officers, from documents show (BI, May 4).

"Transit has taken coverage positions to create liability to Transit policies even where the applicable law and reported facts would appear to create no liability," a Lloyd's syndicate charged in a Cole County court filing.

Incentive bonuses based on the resulting reinsurance recoveries create "a conflict of interest that makes it virtually impossible" for Transit managers "to honor their duty of utmost good faith to reinsurers," Robert Kruti, a Chicago-based partner of Lord, Bissell & Brook, representing underwriters at Lloyd's, charged in a court hearing earlier this year.

James C. Owen, a partner with Transit general counsel McCarthy, Leonard, Kaemmerer, Owen,

Lamkin & McGovern, blasted the Lloyd's syndicates charges as "scurrilous and unfounded."

"The receivership offered to the reinsurers' key managers is completely irrelevant to whether or not reinsurers are required to pay valid claims," Mr. Owen said in a written response to the charges.

He also pointed out that Lloyd's syndicates have previously paid Transit on similar claims from the same policyholders; have paid other ceding insurers on some of the same claims; and have killed Transit—which also assumed business as a reinsurer of Lloyd's—for some of the same claims.

"They just don't want to pay an insolvent. That's the bottom line," he said in an interview.

Cole County Circuit Judge Byron L. Kinder, who supervises the Transit receivership, also sounds unimpressed by the bad faith charge.

"When these reinsurers complain

that (Mr. Arnold) is out chasing claims—well, damn right, he'd better be. That's what his job is," Judge Kinder said.

He added that a deferred compensation plan based on reinsurance recoveries is "not such a bad thing" if it retains Transit employees and maximizes recoveries for the estate.

"What's wrong with that?" he asked.

'The receivership clearly seeks to maximize its assets in collection actions on valid claims. To do anything less would be stupid of any cedent,' says James C. Owen.

Reinsurers doing battle with Transit have not fared well in Missouri courts so far.

Last month, a special master appointed by Judge Kinder ordered the 15 Lloyd's syndicates to post a total of \$26.6 million in letters of credit to secure Transit's paid losses and case reserves before their litigation with the receivership goes forward. The Lloyd's syndicates had argued that the law did not require such security.

Earlier this year, Cole County Circuit Judge Thomas J. Brown III similarly ordered Winterthur Swiss Insurance Co., another Transit reinsurer represented by Lord, Bissell, to post \$17 million in LOCs before litigating claims with Transit.

Judge Brown also disqualified Lord, Bissell from representing Winterthur in Cole County court, a ruling the Missouri Supreme Court later affirmed. Turning aside strenuous objections from the law firm, Judge Brown found that Lord, Bissell has a conflict because another of its partners not involved in the reinsurance litigation represents state guaranty fund creditors of Transit.

Judge Brown took over the Winterthur case after Lord, Bissell sought to disqualify Judge Kinder on the grounds that Judge Kinder's wife works for a Jefferson City lobbying firm owned by Thomas W. McCarthy III, the lead partner of Transit counsel McCarthy, Leonard.

Transit has filed a separate motion to disqualify Lord, Bissell in the Lloyd's reinsurance litigation, and that motion is pending, according to Mr. Owen.

Two weeks ago, Transit and the Lloyd's underwriters were discussing the possibility of mediating their dispute. Those talks fell apart last week, though, and the two sides are now preparing to litigate, Mr. Owen said.

"If (their) position is we're criminals, what's the point of mediating?" Mr. Owen asked.

Trial of the first case, involving Lloyd's Syndicate 553, is scheduled to start in July.

Transit, dubbed the "Titanic" of insurance insolvencies by congressional investigators, collapsed in 1985 after years of writing heavily reinsured Fortune 500 liability business. The business has hammered Transit with everything from pollution and asbestos claims to mass tort product liability losses.

As of March 31, the Transit estate reported total assets of \$564.9 million and estimated unpaid liabilities of \$3.5 billion.

The receivership has recovered a total of \$987.7 million in assets from its inception to March 31, including \$654.5 million in reinsurance recoveries, and has distributed \$233.3 million to Transit creditors, representing 25% of allowed policyholder claims.

While Transit has negotiated commutations with scores of rein-

surers, about 300 reinsurers still have not commuted, among them 30 or 40 that represent large recoverables. Transit estimates it will collect another \$400 million from reinsurers between 1998 and 2003, allowing it ultimately to pay 48% of approved policyholder claims.

Transit representatives say their strategy has been to negotiate set-

tlements with reinsurers, but the receivership has also sued a number of reinsurers that Mr. Owen labels "recalcitrant."

Among these are Lloyd's underwriters and Winterthur, which Transit has accused in three lawsuits of breach of contract and "vexatious delay" in paying claims, or bad faith.

The reinsurers have all denied the allegations and have countered with bad-faith charges against Transit.

The first of these disputes scheduled for trial—and the most thoroughly pleaded to date—is a case pitting Transit against Lloyd's Syndicate 553, which was managed by C.J. Warrilow and which Transit claims owes it \$1.2 million on paid losses and \$9.6 million for case reserves.

The Lloyd's syndicate charges that Transit "has breached its duty of utmost good faith to (reinsurers) by engaging in claims handling practices that are intended to maximize Transit's reinsurance recoveries. To this end, Transit routinely allows claims that would not be allowed if Transit, and not its reinsurers, were the ultimate payers of the claims."

Driving the allegedly improper claims handling is Transit's deferred compensation arrangement, which is tied to reinsurance recoveries and creates a conflict of interest for the Lloyd's syndicates, lawyers have charged.

In its court filings, Syndicate 553 cites several examples of Transit's alleged "claims chasing," all of which Transit lawyers hotly deny.

For example, the Lloyd's syndicate charges that the receivership has set up reserves for asbestos property damage claims from W.R. Grace and National Gypsum even though a federal appeals court ruling in a case involving Grace appeared to let Transit off the hook for these claims.

The 2nd U.S. Circuit Court of Appeals ruled in 1993 that Grace can only tap policies that covered the company when its products were installed in buildings, installations that had already stopped by the late 1970s. Grace itself had previously agreed not to seek coverage under post-1977 policies, and since Transit's first policy for Grace inception in 1978, reinsurers say Transit has no liability for these property damage claims.

In a ruling last month, though, a Cole County special master appointed by Judge Kinder rejected the 2nd Circuit decision as "misguided" and adopted an "injury-in-fact" trigger running from installation of asbestos products until their removal.

According to Mr. Owen, Transit set its reserves recognizing that other state laws and other court rulings besides the 2nd Circuit's might have governed Grace's claims.

In a written response to Lloyd's charges, Mr. Owen also noted that Transit actually took the reinsurers' position in arguing that reinsurers the special master and that reinsurers themselves participated.

"Although Transit will appeal this ruling... Lloyd's should not be held to complain, as they exercised their right to participate in the defense and they lost," Mr. Owen said.

Other examples of alleged "claims chasing" cited by Lloyd's syndicate 553 include:

- Transit's alleged use of another ruling by the Cole County special master on pollution claims filed by Purex Industries. The ruling allows a Transit policy to allocate a loss that would trigger policies in several years to the year in which it had the highest limits.

- Syndicate 553 charges that Transit has used the ruling to create huge pollution exposures from other policyholders: "The receiver's reliance on Purex is intended only to manufacture a purported 'legal' justification for the allocation of large losses to Transit's years of coverage when the real purpose is maximization of claims for reinsurance recovery," its court filings states.

Mr. Owen denies this, saying that Transit has rejected demands from several policyholders based on the Purex decision, while allowing such claims from other policyholders only when the facts fit "the Purex mold."

Rather than appeal the ruling, Transit settled with Purex for 25% of its claim, Mr. Owen added. Transit also feared that a loss in the appeals court could broaden the Purex decision and create huge additional liabilities for the estate, he said.

- Transit's refusal to accept a waiver in which Signal Cos. released Transit and the California Insurance Guarantee Assn. from further liability on a \$2.3 million engineering design liability claim after Signal received the statutory maximum of \$499,000 from CIGA. Transit advised Signal it had no right to release it and invited the company to file a claim against the receivership for the \$1.8 million difference; Signal did, and Transit is now seeking to recover the full \$2.3 million from reinsurers, Lloyd's charges.

Mr. Owen said "the hand written release in question lists the wrong policy number and would never have withstood (Signal's) challenge had Transit denied" its patently "unfair and potentially unethical" to deny the claim, he added.

The Cole County court has also ruled that state guaranty funds can not agree to releases involving more money than they have actually paid out, he said.

- Transit has allowed \$2 million in claims from GAF even though GAF still owes \$2.1 million in premiums, the Lloyd's syndicate charges.

Mr. Owen said the issue of premiums due under GAF's retro-rated policies has been resolved and that Syndicate 553's \$30,370 share of the premium has been allowed as a claim against the estate.

Overall, Mr. Owen insisted that the validity of Transit's claims is the only relevant issue and that the Lloyd's syndicates haven't shown that any of the paid claims are invalid.

"The receivership clearly seeks to maximize its assets in collection actions on valid claims. To do anything less would be stupid of any cedent," he said.

"Every time Transit shows any sign of good faith to the insureds, Lloyd's considers it to be a violation of the duty to Lloyd's," Mr. Owen complained. "The duties must be balanced, and Transit has done so in all instances." **BI**

Letters

Continued from page 8

cies in 90 days.

Getting that huge ship to make tight turns took time, but it all works so smoothly now that it is a wonder it could have taken a year or more to get a policy just 10 years ago.

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It is without any doubt, however, a two-way street. We retrained brokers,

underwriters, loss control engineers and claims management people—who previously only identified problems—and replaced them with "solution engineers." We trained our legal defense team by teaching them the principles of time/task management. None of this would have been possible without their absolute commitment to world class customer service.

In conclusion, if you are not happy with the quality of services being provided, take matters into your own hands. Become the leader they need. Handpick those folks you want to work with you. There is no room for those who can't perform up to the standards you set. Look to yourself as a manager, for the failure of the people who work for you is your failure to manage effectively.

John C. Calkins
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PPD

Continued from page 2

Employer representatives contend that by holding the briefing it assumed a lobbying role and could prompt legislators to add measures to increase benefits to several bills now in the Legislature.

Employer groups' complaints of unfair representation center on two, so-called employer representatives appointed to the commission by Democratic politicians who draw much of their support from plaintiffs attorneys and labor.

One of those two commissioners, Robert B. Steinberg, is a senior partner in the Los Angeles firm of Rose, Klein & Marias, which represents plaintiffs and workers comp applicants. Mr. Steinberg, who voted for the resolution, was appointed to the commission by former Speaker of the Assembly Willie Brown, now San Francisco's mayor.

Commissioner Kristen Schwenkmeyer was appointed by President Pro Tem of the Senate Bill Lockyer. She is a partner in Gordon & Schwenkmeyer Inc., an El Segundo, Calif., telemarketing firm that raises funds for Democratic campaigns, charities and progressive issues.

A vote for higher disability benefits does not mean she is pro labor, said Ms. Schwenkmeyer, whose company employs 200 workers. There is not a single employer viewpoint on the issue, she said, and Sen. Lockyer has never told her how to vote on commission items.

"I feel that I fairly represent employers because workers are the key to any company's success, and it is important that they are treated fairly," Ms. Schwenkmeyer said. "Our study showed that the present permanent disability schedule is grossly underpaying workers with permanent disabilities, and we need to take steps to fairly compensate the injured worker."

Neither Mr. Steinberg nor Tom Rankin, president of the California labor federation AFL-CIO in Sacramento and current chairman of the commission, could be reached for comment.

Christine Baker, the commission's executive officer, said that Mr. Steinberg and Ms. Schwenkmeyer have not consistently voted in favor of labor.

Sacramento insiders familiar with workers compensation say that employer claims of an unfair balance on the commission is not new. However, they note that the commission's recommendation for increased permanent partial disability benefits is the first action pitting labor interests against those of employers.

"It has the potential of unhinging the whole commission concept," said Gregory Vach, director of workers compensation for Interstate Brands Corp. in San Diego.

"If you don't have a balance, who is going to believe it is a credible commission? We have been laboring under that problem for years. Now, when the rubber hits the road on this kind of thing, it's pretty tough," said Mr. Vach, who was appointed as an employer representative to the commission by Republican Gov. Pete Wilson.

The commission, created by 1993 workers compensation reform legislation, is charged with recommending modifications to improve the workers compensation system. The legislation that established the commission also states that employers and workers are to be evenly represented.

California employer groups say a benefit increase may be necessary, but it should not be based solely on RAND's findings.

RAND's Institute for Civil Justice released its report last fall (BI, Nov. 24, 1997). RAND researchers found that claimants injured in 1991 and 1992 receive substantially lower

wages than employees in a control group. The state's permanent partial disability benefits compensate for only "a small fraction of wage loss for the vast majority of workers with minor permanent partial disabilities," the RAND study concluded.

In the first four to five years after an injury, PPD claimants' earnings were about 40% less than workers in the control group, researchers found.

RAND's study, which was commissioned by the CHSWC, noted that the goal of California's permanent partial disability compensation is to replace two-thirds of lost wages.

Employers and insurers, however, dispute that the purpose of PPD benefits is to replace lost wages.

Among the faults employers cite with the study are: it lacks data on self-insured companies, which are more apt to have aggressive return to work programs; it is based on recession-year data; and it does not take into account the fact that many low-

wage workers with injuries moved or changed jobs rather than returned to work.

Rand acknowledged some weaknesses in the study and has recommended additional research, which the commission supports (BI, Nov. 24, 1997).

The commission's Ms. Schwenkmeyer said there is a need to continue the study of wage loss.

"However, we can't continue to postpone increases waiting for a future study when we already know there is a significant underpayment," she said.

In addition to arguing that the recommendation to raise benefits was based on flawed research, employer groups say the commission also voted on the resolution with little warning.

"It was not an agenda item, and there was no debate," said Joseph E. Markey, association manager and legislative advocate for the California Self-Insurers Assn., whose members

include self-insured employers in the state. "It was an internal decision by the commissioners without prior notice to the public."

Mr. Markey also said that he is "not real pleased with the makeup of the commission from the standpoint of its representation of employers."

The vote for a resolution calling for a benefits increase was not on the agenda for the April 16 meeting, but it had been a discussion point for months, the CHSWC's Ms. Baker said.

One of the CHSWC's employer representatives was not present during the meeting, and the resolution received six votes in favor with one abstention.

"The bottom line" on the commission "is it is not a 4-4 split. The party lines came to the forefront on this one," said Jill Dulich, regional director for Marriott International Inc. Claims Services for the Western Region in Santa Ana, Calif. Ms. Dulich also is chairman of Californians for

Compensation Reform, an employer-backed lobbying organization.

Commission member Mr. Vach said he abstained rather than vote against the resolution because he does not flatly oppose a benefits increase. However, he is troubled by the handling of the vote and its implications.

"It was too abrupt, there was not any discussion on it before the vote," Mr. Vach said. "There is a need to increase benefits in certain types of cases and for certain individuals, but we haven't established who that is, and giving a broad benefit increase is not a wise use of money."

A key problem with raising workers comp benefits is that it generally also means an automatic increase in attorney fees, employers say.

The state's Workers Compensation Appeals Board regulates attorney fees. By precedent, it has granted attorneys fee increases with little evaluation every time comp benefits increase, Mr. Vach said. **BI**



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Quality score card a starting point

Despite its shortcomings, "The Quality Score Card for the Property/Casualty Insurance Industry" issued recently by the Risk & Insurance Management Society Inc. and The Quality Insurance Congress is sure to do more good than harm.

"That's easy for you to say," I can hear many industry executives saying who are dissatisfied with the score card, either because they don't like the scores their companies received or because their companies were not scored.

Putting myself in the shoes of a chief executive officer whose company was scored below others or not scored at all, I can sympathize. But as an observer of the commercial insurance business, I think it is unrealistic to have expected more of the first score card than was delivered.

Dealing first with the scores, they were predictable. In letter-grade terms, the industry as a whole earned a "D," and only a few companies eked out a "B" for performance, while suffering a "C" for customer satisfaction.

Why is anyone surprised? Have they not been listening to their customers at conferences and seminars around the country and in business meetings or over dinners? I cannot remember once in 21 years hearing a risk manager extol the virtues of a brokerage, insurer or third-party administrator. I have given up counting the times

I have heard risk managers complain about unresponsive—or, worse, irresponsible—brokerages, insurers and TPAs.

That is not to say, however, that I have not heard risk managers sing the praises of an individual at a brokerage, insurer or claims administrator. But too often those songs of praise have included verses on how that individual broker, underwriter or claims person had to go to heroic efforts to overcome corporate and institutional bureaucracies to accomplish a goal.

So if you ask a risk manager to score a company, I think he or she will score the totality of the experience, not what an individual working on his or her business was able to accomplish.

And what of those who complain that the score card rates too few companies?

It's a fair criticism, but the effort had to start somewhere. Now that it is out there and everyone is talking about the results, it is likely that more risk managers will stop and fill out the questionnaire the next time they receive it. This, in turn, will give researchers more data to score more companies.

Many risk managers have admitted after seeing the results of the first score card that they are sorry they did not fill one out.

The fact that too few brokers and insurers are scored and no TPAs are scored is not sufficient reason to delay the release of the score card, as some executives have suggested.

This first score card will help improve the quality of products and services demanded by risk managers and delivered by the industry.

No longer will vendors be able to operate on a pass/fail basis, under which failure is defined only by the loss of a client. Vendors now will be forced by this score card to work for an "A."

The score card also serves to focus both risk managers and the industry on key factors that customers consider important in judging performance and satisfaction. This alone will open many new dialogues between customers and their vendors.

Finally, the score card is forcing vendors to take a hard look at themselves. While some scores may not be fair or accurate, they certainly reflect customer perceptions. And, in this case, perception is reality.

If a poor score is due to misperceptions, the company has to do a better job of demonstrating its expertise and showcasing its employees.

Some executives have questioned why Willis Corroon Group P.L.C. outscored the other brokers, noting that Willis was the driving force behind the QIC. I see nothing underhanded at work here; Willis no longer even has a representative on the QIC executive committee.

And, if Willis' scores were enhanced because of its early public involvement with the QIC, it shows that vendors will indeed benefit from affiliation with quality improvement efforts.

Publisher and Editorial Director Kathryn J. McIntyre and Editor Paul D. Winston publish columns on alternate weeks.



Kathryn J. McIntyre

Businesses critical of EPA Web site

By MARK A. HOFMANN

WASHINGTON—Business groups fear that information in a new government database of environmental mishaps and violations at selected industrial facilities is not accurate enough to provide a true picture of companies' environmental record.

And, even though representatives of the industries included in the database say that merely being on the list won't increase their legal exposure to pollution-related lawsuits, they fear that the U.S. Environmental Protection Agency eventually could add a controversial toxicity weighting rating system to its new Sector Facility Indexing Project, which the agency has posted on the Internet.

The EPA initially planned to include the toxicity weighting system but has held off publishing it.

The pilot program, unveiled May 1 by EPA Administrator Carol M. Browner, contains information on 653 facilities in five industrial sectors: automobile assembly; iron and steel manufacturing; petroleum refining; primary smelting and refining of non-ferrous metals, such as aluminum and copper; and pulp manufacturing.

An EPA spokeswoman said last week the agency plans to add other industries to the database if the pilot project works as planned, though no timetable for additions has been set.

She added that the agency is "reviewing options as to how often to update" information regarding the five industry groups already listed. She said the EPA plans to update the data in mid-July, but there is no firm timetable for additional updates. The EPA spokeswoman also noted that the updates would not be subject to industry review before publication.

As she unveiled the index at a news conference, Ms. Browner said "providing the public with basic environmental information about their communities is one of the most powerful tools available for protecting public health and the environment."

She said that for each facility listed, "all of the information already re-

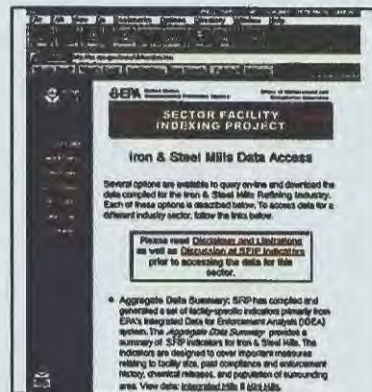
quired under the Clean Water Act, the Clean Air Act, inspections, violations, enforcement actions and toxic releases, will now be available in one place."

The fact that the information will be available to the public online doesn't bother the industries affected. The quality of the information does.

"Merely being on the list does not give rise to liability," said Julie Becker, senior counsel for the Washington-based American Automobile Manufacturers Assn., which represents the "Big Three" automakers.

She said that much of the data deals with permitted chemical releases.

"We're not concerned about being



The EPA's World Wide Web site.

on the list; we believe the public has a right to know. It's what's presented and how it's presented that concerns us," said Larry Slimak, director-facility environment department in the Detroit office of the AAMA.

Mr. Slimak said the lists could mislead the public about a facility's compliance record, because the listing does not differentiate between minor violations and major violations.

The AAMA is far from alone.

"While we haven't gotten a final position statement, we continue to have concerns about known database errors, the proposed hazard index which is still in play, and improper characterization of manufacturing sites" because the site does not differentiate between paperwork errors

and significant long-term permit violations, agreed Theresa K. Larson, director of environmental quality for the National Manufacturers Assn. in Washington.

In a statement released in response to the EPA's announcement, the AAMA wrote that "a company that voluntarily audits its facilities and self-reports violations will be penalized by higher facility non-compliance. This is unfair to those firms that make every effort to meet their environmental and reporting obligations."

The Washington-based American Petroleum Institute offered similar criticisms in a statement.

"Two items stand out in the petroleum refining sector. First, the information on spills tends to be exaggerated because of the limited database. Second, the reporting periods are divided into compliance quarters, and any violation, regardless of kind or severity, reports that facility out of compliance for the quarter" meaning a late report has the same weight as a serious air or water quality violation.

The API also noted that "at industry's request last summer, several companies reviewed their individual environmental compliance records in the EPA database. They found a remarkable number of errors. Subsequently, many of these companies gave EPA corrections, and from our reading today, not all the corrections were made."

Mr. Slimak also said the AAMA remains concerned about "EPA's earlier attempt to put in a toxicity rating not based on sound science. We had lots of concerns about how they were crafting that." Critics, including state environmental agency officials, had said the EPA's methodology for the proposed toxicity rating created erroneous comparisons.

The EPA spokeswoman said agency officials "still haven't decided" whether to add the toxicity index to the database in the future.

The SFIP can be accessed at <http://www.epa.gov/oeca/sfi>.

Buffett

Continued from page 2

duced by the chairman as "this hyperactive fellow over here."

Asked about the effect of the insurance industry consolidation's on Berkshire's insurance business, Mr. Buffett noted that though consolidation continues to be a significant development in the insurance industry, "there is no merger that has taken place that has an effect either on GEICO or our reinsurance business."

On the reinsurance front, "lack of fear" by some competitors has caused them to price coverage below the level appropriate for the risks they're covering, a trend that probably will continue, Mr. Buffett opined.

Inappropriate pricing is especially possible in high-level catastrophe reinsurance, where the infrequency of events can leave a company that underpriced coverage believing it has profited for years before the big loss occurs and wipes it out.

"The super-cat business you can price wrong... you can be pricing it at half of what it should be priced at," Mr. Buffett said. "When you are selling insurance against very infrequent events, you can totally misprice it and not know about it for a long time."

And, addressing catastrophe bonds, Mr. Buffett said, "Super-cat bonds open up that possibility very wide" and also create new potential for "dumb investors."

But, he said, catastrophe bonds are "very likely to be a competitive factor that brings our volume down a lot. It

won't affect our premiums."

"We very likely will do a whole lot less super-cat business in the next few years," Mr. Buffett said. But, he added, "(Insurance) is a business that, if you exercise some discipline, you should find some ways to make money, but it won't necessarily be the same way."

Answering a question about what "keeps him awake at night," Mr. Buffett said he has no worries and certainly doesn't lose sleep over Berkshire's \$1.5 billion reinsurance contract with the California Earthquake Authority, believing it was priced appropriately and, as such, is good business for Berkshire.

"We could lose a billion dollars in a California earthquake, but I'm not concerned about it," he said.

"But," Mr. Buffett added, "I have a sister who lives in California and told her that if the dogs start running in circles or something, call me quickly."

"We really have a wonderful insurance business," Mr. Munger said. "In addition to having a wonderful earning power, it is a lot less likely to get clobbered than many other businesses."

"It may sound strange, but we don't see losing \$1 billion in a California earthquake as getting clobbered," Mr. Buffett said. "That's part of doing business."

In typical fashion, Mr. Buffett made short work of the business portion of the shareholders meeting, moving through the company's annual business meeting in under 10 minutes.

Among the other subjects addressed during the several hours of questions

that followed:

- Mr. Buffett said insurance operations will remain the most important aspect of Berkshire Hathaway's portfolio, though he noted the company has "a lot of fun" with all its operations and doesn't have a strategic plan, instead doing "what makes sense."

- And, added Mr. Munger, "I also want to say proudly we have no mission statement."

- On how much time he devotes to playing bridge, Mr. Buffett said: "We should put this in the annual report. It may be a material factor." He plays about 10 hours a week, he said, hours that come out of his reading time. "and I don't become any better for it."

- On a plan for successors for himself and Mr. Munger at Berkshire Hathaway, Mr. Buffett said, "We're not going to leave willingly," then he added that the company's directors do have a letter identifying the individuals he and Mr. Munger see as appropriate replacements on the operating and capital allocation ends of the business, if necessary.

- Mr. Munger suggested the company's management is so solid it could continue to perform well even if its top 25 executives died. "It's been lovingly put together to ensure a certain margin of safety," he said.

- Added Mr. Buffett, "That's not an experiment we intend to carry out."

- Berkshire's annual report to shareholders showed the Omaha-based company with net earnings of more than \$1.9 billion for the year ending Dec. 31, 1997, and assets of more than \$56 billion.

Montana

Continued from page 2

At the same time, workers comp insurers and administrators are arguing that such protections would seriously hurt the ability of employers and insurers to see that injured workers receive proper medical treatment that encourages prompt return to work. Those privacy protections also would increase delays in handling workers comp claims and create administrative burdens on claims handlers, workers comp insurers and administrators say.

However, the key question of balance is being discussed in Helena, Mont., a state with about 400,000 workers that sees about 33,000 claims each year. An estimated 15% of the state's work force is unionized.

Montana workers have complained that releases of medical information are overly broad, prompting state labor officials to complain to the insurance commissioner. Prior to that, another state agency already had taken steps to narrow medical release wording on two state workers comp forms.

The controversy in Montana arose recently at a Stimson Lumber Co. mill in Libby, Mont. Local AFL-CIO union representatives sought help from state AFL-CIO officials because supervisors for the Portland, Ore.-based company were telling workers injured on the job that they had to sign a broad release form to receive medical treatment and lost wages under the workers comp system, according to Don Judge, the state AFL-CIO executive secretary in Helena.

The form, which was to be returned to a Missoula, Mont., unit of the insurer, Liberty Northwest Insurance Corp., an independent operating subsidiary of Liberty Mutual Group, "effectively releases all medical information, records and communications with medical providers regarding any care, service or procedure... provided me, including but not limited to medical, psychiatric or psychological diagnosis, treatment, evaluation, advice or other services that affect the structure of any function of the human body or mind."

That form was a "blatant" example of "inappropriate use of medical information by insurers and employers under existing privacy protections," Mr. Judge wrote in a letter to Mark O'Keefe, the Montana insurance commissioner. Mr. Judge also urged Mr. O'Keefe to make sure workers comp insurers would not be exempted from the NAIC's proposed Health Information Privacy Act model.

"The bottom line is that workers should not have to surrender their rights to privacy of their medical records as a condition of employment," Mr. Judge said.

"Any information legitimately required for processing workers compensation claims is released to the appropriate entities when a worker signs his or her claim form. Rather than being used for any legitimate purpose, any additional information gathered

is all too often used to inappropriately delay or deny claims, to harass, intimidate or embarrass workers, or to blackball workers from future employment," Mr. Judge wrote.

In response, Charles E. Lundeen, vp/corporate counsel for Liberty Northwest in Portland, Ore., said the medical release form in question in the Stimson case is similar to one now used in Montana, but only in unusual circumstances—for example, when a claim is litigated.

In most cases, Liberty Northwest relies on the medical release language on the state's workers comp form for the initial report of injury, he said. The insurer's medical and loss control professionals need medical information to determine causation and help ensure the worker receives proper treatment, he said.

Mr. Lundeen denied that Liberty Northwest used medical information inappropriately.

Executives of the Montana state AFL-CIO also are concerned about what they describe as another overly broad release being used by the State Compensation Insurance Fund, Montana's competitive workers comp fund and market of last resort. Labor executives were scrutinizing that release last week and preparing to present their comments in writing soon to the State Fund, Mr. Judge said.

The AFL-CIO's complaint is the first the state fund has received about the release form, which it began using in December 1995 in the majority of lost-time cases, said Jim McCluskey, vp-claims of the State Fund.

The form was developed after reviewing other insurers' paperwork, and "we believe the form represents standard industry practice in workers comp," said Aidan Myhre, the fund's customer relations director. The State Fund, which writes 40% of Montana's workers comp premiums, insures about 24,000 employers, she said.

While the State Fund dispute continues, state officials already have taken steps to limit the breadth of the release paragraphs on two state workers comp forms: an existing form used to initially report injuries and a new claims information form developed for insurers and self-insurers.

The reworded forms, which were available this month, ask doctors to provide only medical information from a worker's file that is "relevant to this claim," according to John Weida, chief of the claims assistance bureau for the Montana Employment Relations Division of the state's Department of Labor and Industry.

"It's the most fair position we can take, given the balancing act that we are asked to do," Mr. Weida said. "Insurers need relevant information so they can reach a fair assessment of the claim reported to them... At the same time, injured workers deserve not to have their medical records spread around indiscriminately."

However, Montana does not regulate all the release forms that insurers or self-insurers may use in their own internal business operations, he said.

Liberty Northwest's Mr. Lundeen

said having a state-authorized form that limits the release of a worker's medical information to relevant information "might be helpful for everyone." Oregon adopted similar limited wording in its first-report-of-injury form, which typically is used in reporting a workers comp case, he said.

The Montana Self-Insurers Assn. helped develop the more narrow state forms and supports them, according to Executive Secretary George Wood in Missoula. "We don't want to know about the fact that (an injured worker) had a sexually transmitted disease when he was 17," he said.

In fact, he would prefer not to have a medical doctor record even the fact that a patient had a tattoo—except for identification purposes—because that fact might make someone handling a workers comp claim think negatively about a worker, he said. "We want to keep the relationship as objective as possible," Mr. Wood said.

If it were brought to his attention that a Montana self-insurer was requiring workers to sign very broad release forms, he said, "I would make a personal contact and say, 'Discontinue that; it's too broad.'"

Restricting medical information to only what is relevant helps workers and may provide extra protection for employers, Mr. Judge said. Otherwise, an employer reacting to non-relevant information—a car assembler's positive HIV status, for example—might find itself violating a law such as the Americans with Disabilities Act if it treated the worker differently.

However, the problem with restricting medical information only to "relevant" data is that "an insurer is not going to know what is relevant until it sees the information," said Bruce C. Wood, assistant general counsel with the American Insurance Assn. in Washington. Insurers need to know a lot of information for a variety of reasons, including making claims to a state's second injury fund and properly apportioning liability when prior injuries have occurred, he said.

In most cases now, insurers get only limited medical information anyway from the treating doctor about the injury and general health conditions, such as diabetes, that might affect a worker's ability to heal, he said.

However, James N. Ellenberger, assistant director of the AFL-CIO's Department of Occupational Safety and Health in Washington, said, "My assumption is that broad wording in release forms is widely used." He had no data on this, however.

Mr. O'Keefe, the Montana insurance commissioner, plans to draft medical records privacy legislation for Montana; it will be introduced when the Legislature reconvenes in January 1999, he said. He is recommending that any laws to increase the confidentiality of personal medical records apply equally to all insurers, including those that provide workers comp coverage.

"Here in Montana, video rental and credit records have stronger legal privacy protections than medical records," he said. **BI**

Group hits health care mandates

ALBANY, N.Y.—A diverse group of New York employers, insurers, state government officials and unions last week joined forces to support a moratorium on any legislation that imposes new mandates on health care plans.

In separate letters to New York Gov. George Pataki, the seven organizations said health care mandates drive up the cost of coverage and lead to an increase in the number of people without group health insurance. In 1996, 17% of New York residents were uninsured, up from 12.1% in 1990, ac-

ording to the U.S. Bureau of the Census.

Dozens of bills introduced in the New York legislature would mandate that a wide range of benefits be covered in group plans. The likelihood that any of the proposals will be enacted is not known yet.

"We want to draw attention to the downside risks of state mandates," said Geoffrey Taylor, director of public policy and communications in Albany for the New York State Conference of Blue Cross & Blue Shield Plans,

one of the groups endorsing the moratorium.

The other groups backing a benefit mandate moratorium are: The Business Council of New York State Inc.; the New York chapter of the National Federation of Independent Business; District Council 37 of the American Federation of State, County & Municipal Employees; the New York State Conference of Mayors and Municipal Officials; the NYS Assn. of Counties; and the HMO Conference of New York.

—By Jerry Geisel

Updates

Age-discrimination bills pass

Continued from page 2

The state Assembly last week passed A.B. 1643, which would re-open courts to age discrimination suits whether a worker was dismissed alone or with several other employees, even if the dismissal was attributed to economic reasons.

The Senate passed S.B. 2192, which would allow age discrimination lawsuits to be brought only for individually dismissed employees.

The bills could be combined for further action and are expected to go to Gov. Pete Wilson by the time the legislative session ends Aug. 31.

Merrill Lynch settles bias suit

CHICAGO—Merrill Lynch & Co. has agreed to fund a new dispute resolution program and will pay \$5 million to lawyers and a total of \$600,000 to eight current and former female securities brokers who sued the company for gender discrimination in 1996.

The monetary award to the eight brokers compensates them for their efforts in reaching the settlement but is not compensation for their discrimination claims. As part of the settlement, which still needs a federal judge's approval, an agreed-upon class of 2,500 current and former financial consultants who have worked for Merrill Lynch since 1994, including the eight women involved in the settlement, now may file gender discrimination claims through a new resolution policy, which will review existing claims on a case-by-case basis, a Merrill Lynch spokesman said. Claims deemed to have merit will be resolved through mediation or independent arbitration.

Also as part of the agreement, Merrill Lynch agreed to drop its mandatory arbitration policy on statutory employment disputes for all its employees. Under that new policy, which takes effect July 1, employees must submit to mediation. If the mediation is unsuccessful, they may choose industry-sponsored arbitration, non-industry arbitration or take their cases to court.

The National Assn. of Securities Dealers Inc., which had required registered securities brokers to bring statutory employment disputes to arbitration, is seeking Securities and Exchange Commission approval of a plan to eliminate mandatory arbitration.

Plans to settle the gender discrimination suit reached an impasse earlier this year after sides could not agree on legal fees (BI, Feb. 2).

Minnesota settles tobacco case

ST. PAUL, Minn.—Minnesota joins three other states in settling its suit with the tobacco industry in an agreement worth \$6.1 billion over 25 years.

The settlement was reached Friday morning and announced late that day by Minnesota Attorney General Hubert H. Humphrey III and Andy Czajkowski, chief executive officer of Blue Cross & Blue Shield of Minnesota, which also was a party to the suit.

The state and the Blues plan sued the industry seeking to recover health care costs for treating smoking-related illnesses and other concessions. The settlement came just before jurors were to hear closing arguments in the 3½-month trial. The jury was expected to have begun deliberations late Friday.

Three other states, Mississippi, Florida and Texas, earlier settled suits before testimony began in their cases.

Tobacco companies earlier this year withdrew from efforts to reach agreement on a national settlement that would have paid states about \$368.5 billion.

Briefly noted

In a closely watched case involving employer amendments to retiree benefits plans, a 3rd U.S. Circuit Court of Appeals panel has unanimously ruled that **Curtiss-Wright Corp.** did not violate federal benefits law when it terminated the health benefits of a group of retirees more than 14 years ago... The U.S. Supreme Court struck down a requirement that plaintiffs alleging **unconstitutional conduct by public officials** meet a very high evidentiary standard before their cases can proceed. The case, *Crawford-El vs. Britton*, was brought by a prisoner who claimed a prison official had retaliated against him for giving newspaper interviews. The U.S. Court of Appeals for the District of Columbia had set a new, higher evidentiary standard for such cases in 1996, but the high court ruled 5-to-4 that the appellate court had overstepped its authority... **Lockton Cos.**, the Kansas City, Kan.-based brokerage, one of the largest retail brokers in the United States, has acquired **Dunning Benefits Corp.** of Dallas. The acquired company will be renamed **Lockton Dunning Benefits Co.** and remain headquartered in Dallas... **Cendant Corp.** has extended until July 1 its \$67 per share tender offer for 51% of the stock of American Bankers Insurance Group. The offer was due to expire May 6... A bipartisan group of U.S. representatives has introduced a **tobacco control bill** that would grant cigarette makers no immunity from lawsuits and would allow states the option of settling their lawsuits with tobacco companies by accepting money from a pool funded by new cigarette taxes or to pursue individual lawsuits... **Holocaust survivors** suing major European insurance companies to recover unpaid claims agreed last week to seek resolution by joining an international commission including U.S. state insurance regulators, insurers and leaders of world Jewish groups (BI, May 4)... **Lydia Kam**, executive vp and chief operating officer of Stamford, Conn.-based **TIG Reinsurance Co.**, has resigned for personal reasons. Mike Wacek, who was appointed TIG Re's president and chief executive officer earlier this year, will assume chief operating officer responsibilities (BI, Jan 12)... Assistant Secretary of Labor **Olena Berg**, who has headed the department's Office of Pension and Welfare Benefits Administration for nearly five years, will leave at the end of next month. A successor has not been named.

Pensions

Continued from page 1

But now lobbyists and others say a changed congressional climate makes consideration and perhaps eventual passage of legislation that enhances the appeal of pension plans a serious possibility.

That change in climate is a result of several factors coming together, experts say, including:

- The change in the federal government's fiscal situation. With the federal government now racking up a surplus—perhaps as much as \$60 billion this year—rather than incurring a deficit, the need to find new revenue sources, such as through imposing new limits on benefit plans, is moot, at least for now.

Given a favorable economic climate, "It becomes easier to pass bills—if they have a sound policy purpose—that cost revenues," said James Klein, president of the Assn. of Private Pension & Welfare Plans in Washington.

- The aging of the baby boom population. With a huge bulge of the population getting closer to retirement, legislators are hearing from their constituents that more needs to be done to assure that aging baby boomers will have adequate retirement income.

- The looming fiscal problems of Social Security. "There is a greater understanding of the limits of what public programs can do and the importance" employer plans can play in meeting employees' future benefit needs, said Frank McArdle, a consultant with Hewitt Associates L.L.C. in Washington.

Still, even in a changed economic and political climate, no one is predicting that the changes called for in the measure will be passed any time soon.

"We need to be realistic. This is not going to happen overnight," Mr. Klein said.

But the introduction of the legislation is good news and a very encouraging sign, Mr. McArdle said.

The Retirement Security for the 21st Century Act contains numerous provisions that would allow employers and employees to funnel more money into pension and savings plans. Those provisions include:

- Increasing to \$15,000 from \$10,000 the maximum annual salary deferral employees could make to 401(k) plans.

- Increasing to \$235,000 from \$160,000 the maximum annual employee compensation that could be included when calculating pension benefits.

This change could lead to significant increases in benefits that could be provided through qualified plans. Take the case of a pension plan that provides a retirement benefit equal to 1% of final average pay times years of service.

Under current law, an employee with a final average salary of \$200,000 who works 40 years has his or her benefit capped at \$64,000 a year, because of the \$160,000 limit. Under the legislation, the same employee would be entitled to an annual pension benefit of \$80,000.

- Raising the maximum allowable contributions made to defined contribution plans and the maximum benefit that could be funded through defined benefit plans. The defined contribution plan limit would rise to \$45,000 from \$30,000, while the annual maximum benefit funded through defined benefit plans would increase to \$140,000 from \$130,000.

- Allowing employees 50 and older to contribute an additional \$5,000 each year to 401(k) and other savings plans. This change, said legislators at a congressional hearing last week, would be especially beneficial to women who return to the workforce after raising families and have only a limited number of years to make contributions to their savings plans.

Benefit managers welcome the proposed changes to increase maximum benefits provided through pension and savings plans.

"I like it. It is terrific," said Michael Pikely, corporate actuary and benefits consultant at Hartmarx Corp. in Chicago.

By increasing the maximum benefit and contribution limits, corporate senior managements will take more interest in qualified plans and be more likely to approve benefit enhancements, he noted.

By contrast, current law so limits maximum benefits and contributions that senior management receives a good chunk of pension benefits through non-qualified plans and thus lacks a strong personal interest in boosting qualified plan benefits, Mr. Pikely said.

Certain changes to non-discrimination rules also would have the effect of generating greater benefits for higher-paid employees.

One of those changes would permit the multiple use of a liberal test used to compare contributions of highly and non-highly paid employees to 401(k) plans. Under current law, a plan is non-discriminatory if contributions by highly paid employees do not exceed deferrals by lower-paid employees by more than 200% or 2 percentage points of average deferrals, whichever is less.

However, if a savings plan also has a matching feature or allows employees to make after-tax contributions, a different, less liberal test must be used if the 200%-2 percentage points test is run on the pretax contributions.

Under the less favorable test, average contributions made by or for highly paid employees can't exceed 125% of contributions for lower-paid employees. The legislation would permit the 200%-2 percentage points test to be used on all contributions made to the savings plans.

In addition, the measure would give employees an escape clause from meeting other rigid non-discrimination tests.

One of those tests requires that the percentage of lower-paid employees covered by a pension plan be at least 70% of the percentage of highly paid employees covered by the plan. For example, if 80% of a company's highly paid employees were covered by its pension plan, at least 56% of lower-paid employees would have to be covered.

The legislation says a facts and circumstances test could be used when use of mathematical tests is not appropriate, a relaxation of rules that could give employers more leeway in offering plans to their employees. The legislation says there would be appropriate safeguards to prevent abuse of a facts and circumstances test but does not spell out what those safeguards would be.

Other provisions in the legislation would eliminate rules that appear illogical and without justification.

For example, the measure would permit an employee who moves between the private and non-profit sectors to roll savings account balances from his or her former employer's savings plan to the new employer's plan. Such transfers between 401(k) plans and 403(b), the non-profit world's rough equivalent of 401(k) plans, now are prohibited.

Other provisions in the legislation would:

- Index the pension benefit cash-out limit to inflation. Currently, employers can terminate former employees from their pension plans and give those employees a lump-sum payment if the cash value of the benefits is \$5,000 or less. Many employers like to cash out departing employees because premium payments no longer have to be paid to the Pension Benefit Guaranty Corp. on their behalf, and companies do not have to provide annual pension plan-related reports to those employees.

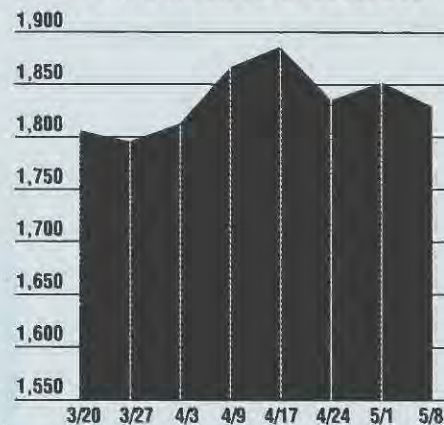
Under the measure, the \$5,000 cash-out limit would be indexed to inflation. Currently, there is no indexing of this limit.

- Turn over to the PBGC responsibility for finding missing participants in their defined contribution plans. Currently, the PBGC's missing participant program can be used only by employers terminating defined benefit plans.

The bill, though, does include one provision that could increase some employers' pension costs. That provision would require employers that offer matching contributions in their 401(k) and other savings plans to vest those contributions after three years.

While many employers already use a three-year vesting schedule for matching contributions, federal law gives them up to seven years to fully vest those contributions. **BI**

BI Insurance Index



Base=100 on Dec. 29, 1978
Source: Nordby International Inc. (nordby.com) Boulder, Colo.

PCS catastrophe options

As of May 1	Call spread	Price bid/ask	Call spread	Price bid/ask
National Annual 1998			California Annual 1998	
40/60	5.5/8.0		40/60	1.9
60/80	2.5/6.5		150C	1.2/2.0
80/100	1.5/5.8		Western Annual 1998	
Southeastern September 1998			40/60	2.2
40/60	2.6/3.3		80/100	NA
Northeastern September 1998			150C	1.5/2.0
100/150	1.7		Eastern September 1998	
Florida September 1998			20/40	3.5/4.8
40/60	1.4/2.4		40/60	2.7/3.2

Total volume: 150 Total open interest: 21,232

For information on PCS cat options, call the Chicago Board of Trade at 312-435-3674.

Source: Chicago Board of Trade

British Issues

Companies	pence	P/E	Div. %	Yield	52-week high-low
Comm'l Union	1139	21.7	32.5	2.9	1300-630
Gen'l Accident	1428	9.7	37.5	3.3	1626-851
Gdn Royal Exch	400	5.9	12.1	3.0	495-257
Legal & Gen	694	17.5	12.7	2.3	785-400
Royal & Sun	682	17.4	22.8	3.3	825-440

Brokers

Lmbrt Fenchurch	115	8.2	8.4	9.0	138-101
Lloyd Thmpson	179	12.1	10.0	6.9	196-151
Sedgwick Grp	158	12.3	7.0	4.5	171-115
Willis Corroon	166	13.8	6.8	5.2	174-116

Note: Prices are May 8 closings; other numbers from May 7.

Source: Nordby International Inc. (nordby.com) Boulder, Colo.

BI Industry Stock Report MAY 4, 1998, THROUGH MAY 8, 1998

BROKERS

	Price	Weekly % change	Year to date % change	52-week High	Low	Vol.(000)	
Aon Corp.	NYS	63.88	-0.20	8.96	68.19	45.50	954
E.W. Blanch Holdings Inc.	NYS	36.38	3.01	5.63	38.75	22.13	92
Gallagher Arthur J. & Co.	NYS	43.25	-1.00	25.59	46.56	30.38	281
Hib, Rogal & Hamilton	NYS	17.50	-2.10	-9.39	19.63	13.50	28
Kaye Group Inc.	NDQ	7.13	1.79	7.55	9.00	4.75	9
Marsh & McLennan	NYS	87.56	-4.63	17.44	94.88	59.88	1853
Poe & Brown	NYS	36.38	-5.83	22.27	39.38	18.31	31
Sedgwick Group PLC	NYS	12.75	-1.92	3.55	14.44	9.38	24
Willis Corroon Corp.	NYS	13.88	-0.89	12.69	15.19	9.75	142
AVERAGE			-1.45	10.67			

INSURERS/REINSURERS

ACE Ltd.	NYS	37.19	-1.82	15.61	42.50	19.94	1024
Acceptance Insurance Cos.	NYS	23.00	0.82	-4.91	28.63	18.50	182
AEFON N.V.	NYS	137.88	0.14	53.84	141.25	68.06	98
Aetna Life & Casualty	NYS	80.63	-1.45	14.26	118.13	66.31	2791
AFLAC Inc.	NYS	65.50	-1.23	28.12	69.00	43.00	1900
Allied Group Inc.	NYS	26.44	-10.95	-7.64	35.75	24.00	1585
Allstate Corp.	NYS	93.38	-2.03	3.18	100.25	64.75	3962
AMBAC Indemnity Corp.	NYS	55.44	-4.73	20.52	61.00	34.25	1084
American Bankers Ins.	NDQ	60.88	-1.12	32.52	66.06	27.00	1575
American Financial Group	NYS	44.25	0.71	9.77	49.25	34.56	413
American General	NYS	66.38	-1.58	22.77	68.88	43.38	2445
American Heritage Life Ins.	NYS	21.94	-3.04	21.88	25.00	12.75	108
American Indemnity/Fin'l	NDQ	12.63	-0.98	-9.01	15.50	9.50	10
American International	NYS	128.69	-2.79	18.33	140.31	85.13	3405
Argonaut Group	NDQ	34.00	-0.73	0.37	38.13	26.75	150
AXA-UAP Group	NYS	60.44	0.94	54.97	62.63	29.25	292
Baldwin & Lyons Inc.	NDQ	22.63	-1.63	-6.22	28.75	17.50	7
Berkley W.R. Corp.	NDQ	48.00	-0.78	9.40	49.50	33.63	609
Berkshire Hathaway Inc.	NYS	70000.00	1.01	52.17	71000.00	30000.00	1
Capital RE Corporation	NYS	73.75	-2.48	18.83	77.44	42.50	178
Capitol Transamerica Corp.	NAS	20.75	2.47	-2.64	28.13	19.00	68
Centris Group Inc.	NYS	14.00	-1.32	25.49	14.81	9.13	117
Chartwell Re	NYS	30.25	-1.22	-10.37	36.25	26.00	80
Chubb Corp.	NYS	76.94	-2.07	1.74	83.44	57.00	1895
CIGNA Corp.	NYS	211.88	-0.06	22.92	214.88	136.94	915
CNA Financial Corp.	NYS	149.50	0.72	17.03	159.94	99.50	200
CNA Surety	NYS	16.13	-3.73	4.45	16.75	12.88	100
ENC Insurance Group Inc.	NDQ	14.63	-2.50	10.38	15.88	11.88	30

	Price	Weekly % change	Year to date % change	52-week High	Low	Vol.(000)	
ESG Re Limited	NDQ	23.63	-8.25	0.53	28.88	20.88	3165
Enhance Financial Services	NYS	65.94	-4.09	10.82	75.19	40.75	260
Everest Reinsurance	NYS	39.31	-5.56	-4.70	45.25	31.50	1290
Executive Risk Inc.	NYS	67.50	0.84	-3.31	75.75	47.88	482
EXEL Ltd.	NYS	74.88	0.00	18.15	81.13	39.50	1119
Fremont General Corp.	NYS	57.94	1.53	5.82	62.13	27.38	391
Frontier Insurance Group	NYS	26.00	-3.26	13.66	39.25	20.00	735
Gainco Inc.	NYS	8.75	-0.71	2.94	10.19	7.88	186
General Re Corp.	NYS	219.75	-2.33	3.66	228.88	168.00	713
Gryphon Holdings	NDQ	17.88	0.35	6.72	19.38	14.13	32
Harleysville Group	NDQ	25.75	-2.83	7.29	28.50	16.19	90
Hartford Steam Boiler	NYS	67.94	1.87	23.10	69.88	48.50	287
HCC Insurance Holdings	NYS	21.75	-0.57	2.35	32.69	15.63	522
ING Groep N.V.	NYS	67.44	-3.40	59.38	69.81	38.88	301
IPC Holdings Ltd.	NDQ	32.44	-2.44	0.78	33.25	23.25	168
Hartford Financial Services	NYS	112.69	1.18	20.44	116.88	75.13	1304
LaSalle Re Holdings Ltd.	NYS	36.63	-3.78	3.53	42.94	27.25	196
Life Re Corp.	NYS	74.13	-0.50	13.71	77.44	39.38	193
Lincoln National	NYS	88.81	0.21	13.68	93.38	57.50	1103
MAIC Holdings Inc.	NYS	28.94	-3.34	8.03	30.38	16.50	44
Market Corp.	NYS	170.50	5.25	9.21	177.50	109.00	22
MBIA Insurance Group	NYS	74.88	-1.56	12.07	80.94	49.25	1192
Meadowbrook Insur. Group	NYS	31.50	-4.18	20.86	35.00	21.50	27
Mid Ocean Ltd.	NYS	75.88	0.00	39.86	81.63	44.13	416
MML Cos. Inc.	NYS	22.88	-0.81	-8.96	27.88	21.88	130
Mutual Risk Mgmt. Ltd.	NYS	31.56	-5.08	5.43	36.75	18.63	611
NAC Re Corp.	NYS	46.94	-7.17	-3.84	53.81	39.50	341
Navigators Group	NDQ	19.25	0.00	2.50	22.50	16.75	36
Nobel Insurance Ltd.	NDQ	13.25	0.47	0.95	15.38	12.13	83
NYMagi Inc.	NYS	33.88	10.39	22.90	33.88	19.00	21
Ohio Casualty Corp.	NDQ	49.88	-1.79	11.76	51.25	39.25	343
Old Republic Int'l	NYS	29.31	-4.02	18.24	32.25	18.94	1057
Orion Capital Corp.	NYS	56.31	0.56	21.27	57.75	31.88	219
Partner Re Ltd.	NYS	49.75	-2.45	7.28	52.50	30.75	366
Penn-America Group Inc.	NDQ	19.25	-2.53	-6.10	20.00	12.75	213
Pennsylvania Manufacturer's Co	NDQ	18.88	2.03	12.69	19.38	16.25	82
Philadelphia Cons. Holding	NDQ	22.88	0.00	28.87	23.50	15.13	265
PXRE Corp.	NYS	32.63	8.07	-1.69	35.25	25.88	213
Reliance Group Holdings	NYS	17.88	5.15	26.55	19.13	10.88	1467
Reliastar Financial Corp.</							